

**I. EXECUTIVE ORDERS**  
 MJF 97-27—Special Permits—Agronomic and Horticultural Crop Harvest ..... 922  
 MJF 97-28—Bond Allocation—Jefferson Parish Home Mortgage Authority ..... 922

**II. EMERGENCY RULES**  
**Agriculture and Forestry**  
 Office of Animal Health Services, Livestock Sanitary Board—Quarantining, Vaccinating and Testing of Swine (LAC 7:XXI.905 and 907) ..... 924

**Economic Development**  
 Office of the Secretary—Economic Development Award Program (LAC 13:I.Chapter 60 and Repeal of LAC 19:VII.Chapter 91) ..... 925  
 Workforce Development and Training Program (LAC 13:I.Chapter 50 and Repeal of LAC 19:VII.Chapter 81) ..... 928

**Health and Hospitals**  
 Office of the Secretary, Bureau of Health Services Financing—Long-Term Hospital Reimbursement Methodology ..... 931  
 Private Intermediate Care Facility for Mentally Retarded Qualifying Loss Review ..... 932

**Public Safety and Corrections**  
 Board of Pardons—Clemency Filing and Processing (LAC 22:V.Chapter 1) ..... 934  
 Corrections Services—Juvenile Transfer to Adult Facility (LAC 22:I.335) ..... 937

**Wildlife and Fisheries**  
 Office of Fisheries—King Mackerel Commercial Closure ..... 938  
 Wildlife and Fisheries Commission—Deer Season (Either Sex)—1997-98 ..... 939  
     Early Migratory Bird Season—1997-98 ..... 939  
     Fall Shrimp Season ..... 940  
     Muzzleloader Season ..... 940  
     Nonresident Fishing License Fees ..... 941  
     Oyster Season—1997-98 ..... 941  
     Pheasant Season—1997-98 ..... 941  
     Shrimp Season Closure—Zone 1 ..... 942  
     Shrimp Season Closure—Zone 3 ..... 942

**III. RULES**  
**Agriculture and Forestry**  
 Forestry Commission—1997 Timber Stumpage Values (LAC 7:XXXIX.101) ..... 943  
 Office of Animal Health Services—Livestock Sanitary Board—Equine Infectious Anemia and Livestock Auction Market Requirements (LAC 7:XXI.Chapter 5) ..... 943  
 Sanitary Disposal of Dead Poultry (LAC 7:XXI.101 and 707) ..... 949

**Economic Development**  
 Racing Commission—Bleeder Medication (LAC 35:I.1507) ..... 950  
 Qualifications for Jockey/Apprentice Jockey; and Applicant for a License (LAC 46:XLI.701 and 703) ..... 950  
 Racing a Horse Under Investigation (LAC 35:I.1733) ..... 951

**Education**  
 Board of Elementary and Secondary Education—Bulletin 1929—Accounting and Uniform Governmental Handbook ..... 951

This public document was published at a total cost of \$4,611.66. Nine hundred, seventy-five copies of this public document were published in this monthly printing at a cost of \$2,611.66. The total cost of all printings of this document including reprints is \$4,611.66. This document was published by Bourque Printing, Inc., 13112 South Choctaw Drive, Baton Rouge, LA 70815, as service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

The Office of the State Register provides auxiliary aids for the *Louisiana Register* for visually impaired individuals. By appointment, oral presentation of the *Register* is available at the Office of the State Register, or an audio cassette tape of requested sections of the *Register* can be provided for the cost incurred by the Office of the State Register in producing such a tape. For more information contact the Office of the State Register.

## Environmental Quality

Office of Waste Services, Hazardous Waste Division—Marathon Oil Delisting Petition (LAC 33:V.105 and Chapter 49.Appendix E)(HW057S) . . . . .	952
Solid Waste Division—Financial Assurance for Local Governments (LAC 33:VII.315 and 727)(SW024) . . . . .	954
Office of Water Resources, Water Pollution Control Division—Louisiana Pollutant Discharge Elimination System (LPDES) Program (LAC 33:IX.2341, 2443, 2531, 2533, 2709 and Appendix N)(WP024*) . . . . .	957

## Health and Hospitals

Board of Nursing—Licensure Eligibility and Educational Programs (LAC 46:XLVII.Chapters 33 and 35) . . . . .	960
Officers of the Board; Registration and Licensure; and License Renewal (LAC 46:XLVII.3303, 3347 and 3355) . . . . .	962
Board of Veterinary Medicine—Certified Animal Euthanasia Technicians (LAC 46:LXXXV.1201) . . . . .	963
Fees (LAC 46:LXXXV.501 and 503) . . . . .	963
Licensure Procedures (LAC 46:LXXXV.301-307) . . . . .	964
Operations of the Board (LAC 46:LXXXV.101-106) . . . . .	965
Preceptorship Program (LAC 46:LXXXV.Chapter 11) . . . . .	968
Professional Conduct—Specialty List (LAC 46:LXXXV.1063) . . . . .	968
Veterinary Practice (LAC 46:LXXXV.Chapter 7) . . . . .	969
Office of the Secretary, Bureau of Health Services Financing—Nursing Facility Services—Standards for Payment (LAC 50:II.Chapter 101) . . . . .	970

## Insurance

Office of the Commissioner—Regulation 46—Long-Term Care Insurance . . . . .	975
-----------------------------------------------------------------------------	-----

## Public Safety and Corrections

Liquefied Petroleum Gas Commission—Liquefied Petroleum Gas as a Refrigerant (LAC 55:IX.183) . . . . .	990
Office of Motor Vehicles—Privacy of Records (LAC 55:III.551-565) . . . . .	990

## Revenue and Taxation

Tax Commission—1997 Timber Stumpage Values (LAC 7:XXXIX.101) . . . . .	943
------------------------------------------------------------------------	-----

## Social Services

Office of Rehabilitation Services—Vocational Rehabilitation Policy Manual (LAC 67:VII.101) . . . . .	994
------------------------------------------------------------------------------------------------------	-----

## Treasury

Board of Trustees of the State Employees Group Benefits Program—Plan Document—Infertility Exclusion . . . . .	995
Board of Trustees of the State Employees' Retirement System—Election of Trustees (LAC 58:I.Chapters 3 and 5) . . . . .	996

## Wildlife and Fisheries

Wildlife and Fisheries Commission—Black Bass—Atchafalaya Basin Complex (LAC 76:VII.165) . . . . .	998
Toledo Bend Reservoir Reciprocal Agreement (LAC 76:VII.110) . . . . .	998

## IV. NOTICES OF INTENT

### Economic Development

Licensing Board for Contractors—License, Examination and Hearings (LAC 46:XXIX.303, 503 and 703) . . . . .	1000
Office of the Secretary—Economic Development Award Program (LAC 13:I.Chapter 60 and Repeal of LAC 19:VII.Chapter 91) . . . . .	1001
Workforce Development and Training Program (LAC 13:I.Chapter 50 and Repeal of LAC 19:VII.Chapter 81) . . . . .	1001

### Education

Board of Elementary and Secondary Education—Bulletin 741—Vocational Agriscience/Agribusiness . . . . .	1002
Bulletin 1213—Minimum Standards for School Buses . . . . .	1003
Tuition Trust Authority, Office of Student Financial Assistance—Bylaws (LAC 28:VII.Chapter 2) . . . . .	1003

### Environmental Quality

Office of Air Quality and Radiation Protection, Air Quality Division—Chemical Accident Prevention Program (LAC 33:III.Chapter 59)(AQ157) . . . . .	1008
Chemical Accident Prevention Program Fee Adjustment (LAC 33:III.223)(AQ154) . . . . .	1009
Fee Adjustment for Title V Permit Program (LAC 33:III.223)(AQ153) . . . . .	1010
Lead-Based Paint Activities (LAC 33:III.Chapters 2 and 28)(AQ114) . . . . .	1020
Limiting Volatile Organic Compound Emissions from Batch Processing (LAC 33:III.2149)(AQ159) . . . . .	1035
SOCMI Chemicals Revision (LAC 33:III.2147 and Chapter 21, Appendix A)(AQ156) . . . . .	1037
Stage II Vapor Recovery Systems (LAC 33:III.2132)(AQ158) . . . . .	1038
Synthetic Organic Chemical Manufacturing Industry Vent Stream Exemption (LAC 33:III.2147)(AQ150) . . . . .	1041
Office of Water Resources—Louisiana Pollutant Discharge Elimination System (LPDES) Program (LAC 33:IX.Chapter 23)(WP025) . . . . .	1042

### Health and Hospitals

Board of Dentistry—Advertising and Soliciting by Dentists (LAC 46:XXXIII.301) . . . . .	1044
Dental Practice Address (LAC 46:XXXIII.304) . . . . .	1045
Dental Services at Locations Other Than Dental Office (LAC 46:XXXIII.314) . . . . .	1045
Dentists and Hygienists—Continuing Education (LAC 46:XXXIII.1611 and 1613) . . . . .	1046
Dentists and Hygienists—Fees for Licenses, Permits, and Examinations (LAC 46:XXXIII.415 and 419) . . . . .	1047
Health Care Provider Financial Interest Disclosure (LAC 46:XXXIII.316) . . . . .	1048
Licensure by Credentials (LAC 46:XXXIII.306) . . . . .	1049
Motions for Continuance of Hearing (LAC 46:XXXIII.915) . . . . .	1050

Restricted Licensees (LAC 46:XXXIII.105) .....	1050
Term of License; Renewal (LAC 46:XXXIII.409) .....	1051
Board of Veterinary Medicine—Certified Animal Euthanasia Technicians' Renewal Deadline (LAC 46:LXXXV.1211) .....	1052
Internships and Residencies (LAC 46:LXXXV.1105) .....	1052
Prescriptions and Microchip Implantation (LAC 46:LXXXV.705 and 713) .....	1053
Registered Veterinary Technician Certificate Renewals (LAC 46:LXXXV.811) .....	1054
Office of the Secretary, Bureau of Health Services Financing—Medically Needy Program—Service Coverage Restrictions .....	1055
Pharmacy Program—Maximum Allowable Overhead Cost .....	1056
Substance Abuse Clinics .....	1057
<b>Labor</b>	
Plumbing Board—Medical Gas Piping Installers (LAC 46:LV.304) .....	1058
<b>Revenue and Taxation</b>	
Sales Tax Division—Sales Tax Return—Quarterly Filing (LAC 61:I.4351) .....	1059
<b>Treasury</b>	
Board of Review of Deputy Sheriffs' Supplemental Pay Program—Board Operations; Supplemental pay requirements .....	1060
Housing Finance Agency—Homeownership Housing Program (LAC 71:II.Chapter 3) .....	1060
Office of the Treasurer—State Tax Revenue Limit .....	1066

**V. LEGISLATION**

**State Legislature**

House of Representatives—House Concurrent Resolution Number 31 of the 1997 Regular Session—Family Independence Project (by Representative Windhorst) .....	1068
House Concurrent Resolution Number 108 of the 1997 Regular Session—Medically Needy Program (by Representative Riddle) .....	1069

**VI. POTPOURRI**

**Agriculture and Forestry**

Office of Agricultural and Environmental Sciences, Horticulture Commission—Landscape Architect Registration Exam .....	1070
Retail Floristry Examination .....	1070
Office of the Commissioner—Declaration of Quarantine: North Carolina Sweet Potato Quarantine and Embargo	1070

**Health and Hospitals**

Board of Embalmers and Funeral Directors—Embalmer/Funeral Director Examination .....	1071
Office of Public Health, Nutrition Section—Women, Infants and Children (WIC) State Plan—1997-1998 ...	1071

# Executive Orders

## EXECUTIVE ORDER MJF 97-27

### Special Permits—Agronomic and Horticultural Crop Harvest

WHEREAS: Act 420 of the Regular Session of 1997 enacted R.S. 32:387.8, the "Robert M. Marionneaux, Sr., Grain Transportation Act" (hereafter "the Act");

WHEREAS: although the Act was signed by the Governor on June 2, 1997, it will not become effective until August 15, 1997, pursuant to the provisions of Article III, §19 of the Louisiana Constitution of 1974;

WHEREAS: the Act authorizes the secretary of the Department of Transportation and development to issue, notwithstanding any other provision of law to the contrary, annual special permits for the operation of trucks which haul agronomic or horticultural crops in their natural state, at a gross vehicle weight not to exceed 100,000 pounds, for the fee of \$100 per permit, per year;

WHEREAS: the harvest season for many of Louisiana's agronomic and horticultural crops is in progress;

WHEREAS: as a result of the excessive amount of moisture caused by recent rains, if Louisiana's crops are not harvested and processed expeditiously, much of the 1997 harvest will be lost due to aflatoxin;

WHEREAS: to minimize the crop damage caused by aflatoxin, the recommended procedure is to harvest the crops as soon as possible and, without delay, dry the produce to below 15 percent moisture; and

WHEREAS: R.S. 32:387 provides for the issuance of special permits by the secretary of the Department of Transportation and Development when it is in the best interest of the state, due to unusual circumstances, to raise the gross weight limitation of vehicles or combination of vehicles from 80,000 pounds up to 100,000 pounds;

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

SECTION 1: The secretary of the Department of Transportation and Development is authorized to issue special permits pursuant to R.S. 32:387, which shall be effective for a period of one year, to the operators of the vehicles that transport on Louisiana's state highway system Louisiana's agronomic and horticultural crops in their natural state. The special permits shall allow the operators of vehicles transporting said products a gross vehicle weight limitation, not to exceed 100,000 pounds, for any combination of vehicles having a minimum of 18 wheels and transporting said products. The permits shall not apply to the operation of vehicles on the Interstate Highway System.

SECTION 2: The fee for the permits shall be \$100 per permit issued. The permits shall be processed in the same

manner as the annual special permits issued for the hauling of sugarcane under R.S. 32:387.7.

SECTION 3: For violation of weight in excess of the special permit limitations which occur between the date the special permit is issued and August 14, 1997, the secretary of the Department of Transportation and Development may impose civil penalties pursuant to and consistent with the penalty provisions for violating the terms of a special permit issued under R.S. 32:387 and/or an annual permit issued under R.S. 32:387.7. For violations of weight in excess of the special permit limitations which occur on or after August 15, 1997, the secretary of the Department of Transportation and Development may impose a civil penalty of up to five cents per pound for each violation of the permit's limitations in accordance with the penalty provision set forth in R.S. 32:387.8.

SECTION 4: The last day that the secretary of the Department of Transportation and Development shall issue a special permit under the authority of this order is August 14, 1997.

SECTION 5: This order is effective upon signature of the governor and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 18th day of July, 1997.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9708#003

## EXECUTIVE ORDER MJF 97-28

### Bond Allocation for Parish of Jefferson Home Mortgage Authority

WHEREAS: pursuant to the Tax Reform Act of 1986 (hereafter "the Act") and Act 51 of the 1986 Louisiana Legislature, Executive Order Number MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish (1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1997 (hereafter "the 1997 Ceiling"); (2) the procedure for obtaining an allocation of bonds under the 1997

Ceiling; and (3) a system of central record keeping for such allocations; and

WHEREAS: the Parish of Jefferson Home Mortgage Authority has requested an allocation from the 1997 Ceiling to be used in connection with a program of financing mortgage loans for first time home buyers throughout the Parish of Jefferson in accordance with the provisions of Section 143 of the Internal Revenue Code of 1986, as amended;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1997 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$12,000,000	Parish of Jefferson Home Mortgage Authority	Single Family Mortgage Revenue Bond Program

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect, provided that such bonds are delivered to the initial purchasers thereof on or before October 28, 1997.

SECTION 4: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 30th day of July, 1997.

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

ATTEST BY  
THE GOVERNOR  
Fox McKeithen  
Secretary of State  
9708#032

# Emergency Rules

## DECLARATION OF EMERGENCY

Department of Agriculture and Forestry  
Office of Animal Health Services  
Livestock Sanitary Board

Quarantining, Vaccinating and  
Testing of Swine (LAC 7:XXI.905 and 907)

*Editor's Note:* All Agriculture and Forestry rules, found at LAC, Title 7, will be renumbered during the next few months, so that each Part (I through XLIII) will begin with a Chapter 1 and continue with sequential chapters (through Chapter 99), as needed. A revised *Louisiana Administrative Code*, Title 7, is scheduled for publication during Fall, 1997. As shown below, the *Louisiana Register* is promulgating all Title 7 emergency, proposed, and final rules under the new numbering system.

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), R.S. 3:2093, and R.S. 3:2095, the Livestock Sanitary Board finds an emergency situation to exist due to the continued persistent incidence of brucellosis and pseudorabies in the swine population in Louisiana. The board finds that continued implementation of change in ownership test requirements is necessary for Louisiana to reach a goal of eradication of brucellosis and pseudorabies in swine and to keep pace with the progress of the national eradication programs. The effective date of this emergency rule is September 5, 1997, and it shall be in effect for 120 days or until the final rule takes effect through normal promulgation process, whichever occurs first.

### Title 7

## AGRICULTURE AND ANIMALS

### Part XXI. Diseases of Animals

#### Chapter 9. Swine

#### §905. Quarantining, Vaccinating and Testing of Swine for Brucellosis and Pseudorabies

A.1. The state veterinarian, or his representative, shall have the authority to conduct epidemiologic investigations and quarantine of:

- a. swine herds in which one or more of the animals are found to be positive to pseudorabies, as determined by the epidemiologist, based on the interpretation of official tests;
- b. the herd of origin of swine that have been added to a herd that becomes quarantined because of pseudorabies, if swine have been acquired from said herd of origin within the last 12 months;
- c. herds which have received swine from herds found to have pseudorabies;
- d. herds of swine including feedlots, within a 1.5 mile radius of the quarantined herd, will be monitored in accordance with the recommendation of the state veterinarian and/or epidemiologist by either a test of all breeding swine or by an official random sample test.

2. A herd plan and epidemiology report must be completed within 30 days from the date an animal that originated from the herd was found to be a reactor at slaughter.

3. A herd test must be completed within 45 days from the date an animal that originated from the herd was found to be a reactor at slaughter.

B. To be eligible for release from quarantine, a swine herd must meet the following requirements:

1.a. All swine positive to an official pseudorabies test must be tagged with official reactor tags in the left ears and permitted on Form VS 1-27 to recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws within 15 days.

b. All swine, over 6 months of age and a random sampling of any growing/finishing swine which remain in the herd, must be tested negative 30 days or more after removal of reactors.

c. No livestock on the premises shall have shown signs of pseudorabies after removal of reactors.

#### 2. Whole Herd Depopulation

a. All swine on the premises must be tagged with official reactor tags in the left ears and permitted on a Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws.

b. The premises must remain depopulated for 30 days and the herd premises must be cleaned and disinfected with an approved disinfectant prior to putting swine back on the premises.

C. A herd of swine quarantined because of brucellosis must meet one of the following requirements:

1.a. All swine positive to an official brucellosis test must be tagged with official reactor tags in the left ears and permitted on Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises by disposal means authorized by applicable state laws within 15 days.

b. All swine over 6 months of age which remain in the herd, must be tested according to an approved herd plan.

c. A herd may be released from quarantine upon completion of three negative Complete Herd Tests (CHT).

i. The first test must be completed at least 30 days after removal of the last reactor.

ii. A second CHT must be conducted 60-90 days following the first CHT.

iii. A third CHT is required 60-90 days following the second CHT.

iv. A fourth CHT is required six months after the third CHT.

#### 2. Whole Herd Depopulation

a. All swine on the premises must be tagged with official reactor tags in the left ears and permitted on a Form VS 1-27 to a recognized slaughter establishment, rendering plant, or disposed of on the herd premises or other "approved" location by disposal means authorized by applicable state laws.

b. The premises must remain depopulated for 30 days and the herd premises must be cleaned and disinfected with an approved disinfectant prior to putting swine back on the premises.

D. All movement from pseudorabies/brucellosis quarantined herds, must be accompanied by a VS Form 1-27, Permit for Movement of Restricted Animals, listing the official, individual identification of each animal to be removed.

1. This form must be delivered to an authorized representative at destination.

2. These permits will be issued by a representative of the Louisiana Livestock Sanitary Board.

E. All exposed swine moving from quarantined premises in interstate or intrastate commerce, must move directly to a recognized slaughter establishment or to an approved swine quarantined feedlot or rendering plant.

F. The use of pseudorabies vaccine is prohibited, except by permission of the state veterinarian.

G.1. All swine, 6 months of age or older, must be tested negative for pseudorabies and brucellosis by an official test within 30 days prior to sale.

2. Swine originating from a brucellosis validated-pseudorabies qualified free herd or from a monitored feeder pig herd are exempt from this testing requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 16:392 (May 1990), amended LR 18:839 (August 1992), LR 20:1258 (November 1994), LR 23:

#### **§907. Operation of Livestock Auction Markets**

All swine which are sold or offered for sale in livestock auction markets must meet the general requirements of §111 and the following specific Pseudorabies/Brucellosis requirements:

1. All breeder and feeder swine moving to Louisiana auction markets from farms outside Louisiana, must meet the requirements of §111; and

2. All swine over 6 months of age, being sold at Louisiana livestock auction markets must be identified by official swine backtags, placed on the animals' foreheads and official metal eartags.

3.a. The market shall furnish the Livestock Sanitary Board's official representative a copy of each check-in slip, showing the name of the auction market, the date, the name and complete address of each consignor, and the official backtag numbers applied to the consignor's livestock.

b. It shall be a violation of this regulation for anyone to consign livestock to a Louisiana livestock auction market and give a name and address that is not the name and address of the owner consigning the livestock to the auction market.

4.a. All swine 6 months of age or older arriving at a livestock auction market without an official negative test will have a blood sample drawn for testing.

b. Swine originating from a brucellosis validated-pseudorabies qualified free herd or from a monitored feeder pig herd are exempt from this testing requirement.

c. Testing for pseudorabies and brucellosis at livestock auction markets may be suspended by the state veterinarian due to climatic conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:245 (March 1985), amended LR 11:615 (June 1985), LR 16:392 (May 1990), LR 18:839 (August 1992), LR 23:

Maxwell Lea, Jr.  
Executive Secretary

9708#002

## **DECLARATION OF EMERGENCY**

### **Department of Economic Development Office of the Secretary**

#### **Economic Development Award Program (LAC 13:I.Chapter 60 and Repeal of LAC 19:VII.Chapter 91)**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act and the authority of R.S. 51:2331, the Department of Economic Development, Office of the Secretary hereby finds that emergency action is deemed necessary to prevent delays in the awarding of grants for economic development related infrastructure improvements under the provisions of the Economic Development Award Program inasmuch as such delays could result in the loss of industry and jobs to other states.

This emergency rule is effective August 7, 1997 and shall remain in effect for 120 days or until adoption of the rule, whichever occurs first.

#### **Title 13**

#### **ECONOMIC DEVELOPMENT**

#### **Part I. Commerce and Industry**

#### **Subpart 3. Financial Incentives**

#### **Chapter 60. Economic Development Award Program (EDAP)**

#### **§6001. Purpose**

The purpose of the program is to finance publicly-owned infrastructures for industrial or business development projects that promote economic development and that require state assistance for basic infrastructure development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

#### **§6003. Definitions**

*Applicant*—the sponsoring entity requesting financial assistance from DED under this program.

*Award*—funding approved under this program for eligible applicants.

*Awardee*—an applicant [and/or company(ies)] receiving an award under this program.

*Basic Infrastructure*—the construction, improvement or expansion of roadways, parking facilities, equipment, bridges, railroad spurs, water works, sewerage, buildings, ports, waterways and publicly-owned or regulated utilities.

*Company*—the business enterprise for which the project is being undertaken.

*DED*—Louisiana Department of Economic Development.

*Program*—the Economic Development Award Program.

*Project*—an expansion, improvement and/or provision of basic infrastructure that promotes economic development, for which DED assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

*Secretary*—the secretary of the Department of Economic Development.

*Sponsoring Entity*—the public or quasi-public entity responsible for performing and/or monitoring implementation of the project and monitoring the company's compliance with the terms and conditions of the award agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

#### **§6005. General Principles**

The following principles will direct the administration of the Economic Development Award Program:

1. awards are not to be construed as entitlements for companies locating or located in Louisiana;
2. an award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions;
3. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;
4. the retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state;
5. the anticipated economic benefits to the state will be considered in making the award;
6. appropriate cost sharing among project beneficiaries;
7. if a company does not begin construction of the project within 365 calendar days after application approval, the secretary, at his discretion, may cancel funding for the infrastructure approved from the Economic Development Award Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, LR 23:

#### **§6007. Eligibility**

- A. An eligible applicant for the Grant Award must be one of the following:
  1. a public or quasi-public state entity; or
  2. a political subdivision of the state.

- B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes; or bankruptcy proceedings; or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

#### **§6009. Criteria**

- A. Preference will be given to projects for industries identified by the state as target industries, and to projects located in areas of the state with high unemployment levels.

- B. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community.

- C. Companies must be in full compliance with all state and federal laws.

- D. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when company gives sufficient evidence that it is otherwise likely to relocate out of Louisiana.

- E. The minimum award request size shall be \$25,000.

- F. Projects must create or retain at least 10 permanent jobs in Louisiana.

- G. Preference will be given for wages substantially above the prevailing regional wage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

#### **§6011. Application Procedure**

The sponsoring entity must submit an application on a form provided by DED which shall contain, but not be limited to, the following:

1. an overview of the company, its history, and the business climate in which it operates;
2. a description of the need for the project and the factors creating the need;
3. quantifiable objectives for the project and plans to measure the effectiveness of the project according to those objectives;
4. evidence of the number, types and compensation levels of jobs to be created or retained by the project;
5. a specific description of the project, including construction, operation and maintenance plans, and a timetable for the project's completion;
6. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

#### **§6013. Submission and Review Procedure**

- A. Applicants must submit their completed application to DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant, other

divisions of the Department of Economic Development, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;
2. determine whether the project's financing needs are best met by the proposed award;
3. validate the information presented;
4. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the net economic and fiscal benefits to the state and local communities, will be prepared by DED.

C. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, DED staff will then make a recommendation to the secretary of the Department of Economic Development. The application will then be reviewed and approved by the following entities in the following order:

1. the secretary of the Department of Economic Development;
2. the governor; and
3. the Joint Legislative Committee on the Budget.

D. No funds spent on the project prior to the secretary's approval will be considered eligible project costs.

E. The secretary will issue a letter of commitment to the applicant within five working days of the application review and approval by the Joint Legislative Committee on the Budget.

F. The secretary can invoke emergency procedures and approve an application under the following conditions: The company documents, in writing, to the secretary of Economic Development, with copies to the governor and chairman of the Joint Legislative Committee on the Budget, that a serious time constraint exists and that a new plant, expansion or closure decision is to be made in fewer than 21 days or more than 31 days before the next scheduled meeting of the Joint Legislative Committee on the Budget.

G. If any application is rejected by any of the preceding entities, the application shall not be considered by the next succeeding entity unless first reconsidered and approved by the entity which initially rejected the application.

H. The final 15 percent of the grant amount will not be paid until DED staff inspects the project to assure that all work in the EDAP contract has been completed.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 51:2341 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

#### **§6015. General Award Provisions**

A. **Award Agreement.** A grant agreement will be executed between DED, the sponsoring entity and the company. The agreement will specify the performance objectives expected of the company and the sponsoring entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time frames for investment and job creation. Under the agreement, the sponsoring entity will monitor the progress of the project. DED will disburse funds from invoices or certificates of work completed.

#### **B. Use of Funds**

1. Eligible project costs may include, but not be limited to, the following:

- a. engineering expenses;
- b. site acquisition;
- c. site preparation;
- d. construction expenses;
- e. building materials;
- f. capital equipment.

2. Project costs ineligible for award funds include, but are not limited to:

- a. recurrent expenses associated with the project (e.g., operation and maintenance costs);
- b. company moving expenses;
- c. expenses already approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;
- d. improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;
- e. refinancing of existing debt, public or private;
- f. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment with useful life of less than seven years.

#### **C. Amount of Award**

1. The portion of the total project cost financed by the award may not exceed:

- a. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or
- b. 75 percent for projects in parishes with unemployment rates above the statewide average; or
- c. 50 percent for all other projects.

2. Other state funds cannot be used as the match for EDAP funds.

3. The award amount shall not exceed 25 percent of the total funds available to the program during a fiscal year.

4. The secretary, in his discretion, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

#### **D. Conditions for Disbursement of Funds**

1. Grant award funds will be available to the sponsoring entity on a reimbursement basis following submission of approved invoices from the sponsoring entity to DED. Only funds spent on the project after the secretary's approval will be considered eligible for reimbursement.

2. Award funds will not be available for disbursement until:

- a. DED receives signed commitments by the project's other financing sources (public and private);
- b. DED receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;
- c. all other closing conditions specified in the award agreement have been satisfied.

#### **E. Compliance Requirements**

1. Companies and sponsoring entities shall be required to submit progress reports, as specified in the award agreement, describing the progress toward the performance objectives specified in the award agreement.

2. In the event a company or sponsoring entity fails to meet its performance objectives specified in its agreement with DED, DED shall retain the rights to withhold award funds, to modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or sponsoring entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event a company or sponsoring entity knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

4. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

#### **Title 19**

### **CORPORATIONS AND BUSINESS**

## **Part VII. Economic Development Corporation**

### **Subpart 7. Workforce Development and Training Program**

#### **Chapter 91. Infrastructure Financing Program**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), repealed by the Department of Economic Development, Office of the Secretary, LR 23:

Kevin P. Reilly, Sr.  
Secretary

9708#086

## **DECLARATION OF EMERGENCY**

### **Department of Economic Development Office of the Secretary**

#### **Workforce Development and Training Program (LAC 13:I.Chapter 50 and repeal of LAC 19:VII.Chapter 81)**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act and the authority of R.S. 51:2331, the Department of Economic Development, Office of the Secretary hereby finds that emergency action is deemed necessary for the timely implementation of training programs for companies that are being recruited to Louisiana and for existing companies that are prepared to expand in the state if training assistance is

forthcoming. Undue delay in the implementation of this emergency rule could result in a decision to locate or expand in another state.

This emergency rule is effective August 7, 1997 and shall remain in effect for 120 days or until adoption of the rule, whichever occurs first.

#### **Title 13**

### **ECONOMIC DEVELOPMENT**

## **Part I. Commerce and Industry**

### **Subpart 3. Financial Incentives**

#### **Chapter 50. Workforce Development and Training Program**

##### **§5001. Purpose**

The purpose of the program is to develop and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of:

1. improving the competitiveness and productivity of Louisiana's workforce and business community;
2. upgrading employee skills for new technologies or production processes; and
3. assisting Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

##### **§5003. Definitions**

*Applicant*—the entity requesting training assistance from DED under this program.

*Award*—funding approved under this program for eligible training activities.

*Awardee*—an applicant [and/or company(ies)] receiving a training award under this program.

*Contract*—a legally enforceable agreement between the Department of Economic Development (DED), the awardee and a monitoring entity governing the terms and conditions of the training award.

*Contractee*—the awardee and monitoring entity that are party to a training award contract with DED under this program.

*DED*—Louisiana Department of Economic Development.

*Labor Demand Occupation*—an occupation for which there is, or is likely to be, greater demand than supply of adequately trained workers.

*Monitoring Entity*—a public or not-for-profit entity contracted to monitor the compliance of an awardee with the terms and conditions of a training award contract, and to reimburse the awardee for eligible training costs.

*Program*—the Workforce Development and Training Program.

*Secretary*—the secretary of the Department of Economic Development.

*Subprogram*—the different components of the Louisiana Workforce Development and Training Program, including, but not limited to, New Employee Training and Workplace-Based Retraining.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

### **§5005. General Principles**

The following principles will direct the administration of the Workforce Development and Training Program:

1. training awards are not to be construed as an entitlement for companies locating or located in Louisiana;
2. awards must reasonably be expected to be a significant factor in companies' location, investment, and/or expansion decisions;
3. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;
4. the retention and strengthening of existing Louisiana businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state;
5. the anticipated economic benefits to the state will be considered in making the award;
6. appropriate cost sharing among project beneficiaries;
7. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate; and
8. a train-the-trainer approach will be adopted, whenever appropriate, in order to strengthen the institutional capacity of public and private sector training providers;
9. if a company does not begin the project within 365 days of application approval, the secretary, at his discretion, may cancel funding of the training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

### **§5007. Subprogram Descriptions**

#### **A. New Employee Training**

1. This subprogram provides training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies.

2. The training to be funded can include:

- a. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a subset of the trainees; and
- b. on-the-job training for new employees that is needed to bring the employees up to a minimum skill and/or productivity level.

B. Workplace-Based Retraining. This subprogram provides training assistance for companies seeking to upgrade the skills of existing employees in response to technological advances or improved production processes, or the need to ensure compliance with accepted international and industrial quality standards (e.g., ISO standards, proprietary technology).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

### **§5009. Eligibility**

A. An eligible applicant must be one of the following:

1. an individual employer who seeks customized training services to create, upgrade, or retain jobs in a:

- a. labor demand occupation;
- b. nonlabor demand occupation to prevent job loss;
2. an employer, labor organization, or community-based organization that seeks customized training services to provide training for a labor demand occupation in a particular industry;
3. a consortium made up of one or more educational institutions and individual employers, labor, or community-based organizations that seeks customized training services to provide training in a labor demand occupation;
4. an individual employer who seeks customized training for employees at a facility which is being newly developed or is being relocated from another state into Louisiana.

B. Employees to be trained must be employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained for projects at Stennis Space Center must be Louisiana residents.

C. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes; or bankruptcy proceedings; or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

### **§5011. Criteria**

A. General (These apply to all training subprograms administered under these rules.)

1. Preference will be given to applicants in industries identified by the state as target industries, and to applicants located in areas of the state with high unemployment levels.
2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.
3. During the first nine months of a fiscal year, not less than 25 percent of all funds available during a fiscal year shall be available for employers with 150 or fewer Louisiana-based employees. For the final three months of a fiscal year, the remaining available funds will be available to all eligible employers, without size restrictions.
4. No single employer shall receive more than 10 percent of the total funds available to the program during a fiscal year.
5. Employers receiving awards must provide evidence satisfactory to DED of their long-range commitment to employee training as a means of enhancing their future competitiveness.

#### **B. New Employee Training**

1. Applicants must create at least 10 net new jobs in the state.
2. Participation in pre-employment training does not guarantee students a job upon completion of their training.
- C. Workplace-Based Retraining. Applicants must request training for at least five employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

### §5013. Application Procedure

DED will provide a standard form which applicants will use to apply for assistance. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;
2. the company's overall training plan, including a summary of the types and amounts of training to be provided, and a description of how the company determined its need for training;
3. the specific training programs for which DED assistance is requested, including descriptions of the methods, providers and costs of the proposed training;
4. quantifiable objectives for the training related to the overall performance of the company, and plans to measure the effectiveness of the training according to those objectives; and
5. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

### §5015. Submission and Review Procedure

A. Applicants must submit their completed applications to DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, and other state agencies as needed, in order to:

1. understand the labor market conditions the proposed training is seeking to mitigate;
2. evaluate the strategic importance of the proposed training to the economic well-being of the state and local communities;
3. determine whether the employer's specific needs are best met by training;
4. identify the availability of existing training programs which could be adapted to meet the employer's needs;
5. identify the resources the business can provide to support the training, including trainers, facilities, materials and equipment;
6. identify or develop appropriate curricula; and
7. determine the most cost effective approach to meet the employer's training needs.

B. A cost-benefit analysis tailored to applicants' specific industries shall be conducted by DED to determine the net benefit to the state of the proposed training award. Such analysis will include, but not be limited to, evaluations of:

1. the importance of the proposed training to the state and local economies;
2. the importance of the proposed training to the recruitment/retention of businesses and/or jobs in the state (factors to be considered include the degree of technological advancement of the skills to be taught, the transferability of those skills across companies and industries, and the wage levels of the jobs to be created and/or retained);
3. the training award's expectation as a significant factor in the company's location, investment, and/or expansion decision; and

4. the fiscal impact of the proposed training on state and local governments.

C. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, DED staff will then make a recommendation to the secretary of the Department of Economic Development. The application will then be reviewed and approved by the following entities in the following order:

1. the secretary of the Department of Economic Development;
2. the governor; and
3. the Joint Legislative Committee on the Budget.

D. No funds spent on the project prior to the secretary's approval will be considered eligible project costs.

E. The secretary will issue a letter of commitment to the applicant within five working days of the application approval by the Joint Legislative Committee on the Budget.

F. If any application is rejected by any of the preceding entities, the application shall not be considered by the next succeeding entity unless first reconsidered and approved by the entity which initially rejected the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

### §5017. General Award Provisions

#### A. Award Contract

1. A contract will be executed between DED, the applicant [and/or company(ies)] receiving training and an appropriate monitoring entity from the same geographic area as the applicant. The contract will specify the performance objectives expected of the company(ies) and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time frames for job training and job creation.

2. The monitoring entity will monitor the progress of the training and reimburse the applicant from invoices submitted by the applicant on a form approved by DED.

3. DED will disburse funds from invoices or certificates of work completed.

4. The cost associated with this contract incurred by the monitoring entity will be considered part of the total training award, but will not exceed 5 percent of the award amount or \$10,000, whichever is less.

5. Funds may be used for training programs extending up to two years in duration.

#### B. Use of Funds

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include, inter alia, the following:

- a. instruction costs: wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers and training seminars;
- b. travel costs (limited to 30 percent of the total training award): travel for trainers and training coordinators (company and other) and travel for trainees. Travel expenses

reimbursable under this agreement will comply with state travel regulations, PPM 49;

c. materials and supplies costs: training texts and manuals, audio/visual materials, skills assessment (documents or services to determine training needs), raw materials (for manufacturing and new employee on-the-job training); and

d. other costs: facility rental, wages for on-the-job trainees (limited to 25 percent of a trainee's wage, excluding benefits), and fees or service costs incurred by the monitoring entity associated with the contract to monitor the training and to disburse award funds, as limited by §5017.A.3.

3. Training costs ineligible for reimbursement include:

a. trainee fringe benefits;

b. nonconsumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures), unless owned by a public training provider;

c. out-of-state, publicly supported schools;

d. employee handbooks; and

e. scrap produced during training.

4. Training activities eligible for funding consist of:

a. basic skills: literacy, numeracy, problem solving, team participation, etc.;

b. transferable skills: skills which will enhance an employee's general knowledge, employability and flexibility in the workplace (e.g., welding, computer skills, blueprint reading, etc.);

c. company-specific skills: skills which are unique to a company's workplace, equipment and/or capital investment;

d. quality standards skills: skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

e. pedagogical skills: skills which pertain to instructional methods and techniques to be used by trainers (these are most relevant to train-the-trainer activities).

C. Amount of Award

1. New Employee Training. The training award amount may cover up to 100 percent of the eligible training costs, not to exceed \$500,000.

2. Workplace-Based Retraining. The training award amount may cover up to 50 percent of the eligible training costs, not to exceed \$500,000.

D. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of approved invoices to DED. Funds will not be available for reimbursement until a training agreement between the applicant [and/or company(ies)] receiving the training and an approved training provider has been executed. Only funds spent on the project after the secretary's approval will be considered eligible for reimbursement.

2. A maximum of 50 percent of the training award will be available for reimbursement of eligible costs until the awardee(s) has achieved 75 percent of its contracted performance objectives.

3. Once the awardee(s) has achieved 75 percent of its contracted performance objectives, an additional 25 percent of the grant award will be made available for reimbursement. After the company has achieved 100 percent of its contracted

performance objectives, the remaining 25 percent of the grant award will be made available for reimbursement.

E. Compliance Requirements

1. Contractees shall be required to complete quarterly reports describing progress toward the performance objectives specified in their contract with DED.

2. The termination of employees during the contract period who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a company or sponsoring entity fails to meet its performance objectives specified in its contract with DED, DED shall retain the rights to withhold award funds, to modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or sponsoring entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

4. In the event a company or monitoring entity knowingly files a false statement in its application or in a progress report, the company or monitoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

5. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the monitoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 23:

#### **Title 19**

### **CORPORATIONS AND BUSINESS**

#### **Part VII. Economic Development Corporation**

#### **Subpart 7. Workforce Development and Training Program**

#### **Chapter 81. Workforce Development**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2331 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), repealed by the Department of Economic Development, Office of the Secretary, LR 23:

Kevin P. Reilly, Sr.  
Secretary

9708#062

### **DECLARATION OF EMERGENCY**

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

#### **Long-Term Hospital Reimbursement Methodology**

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted the following emergency rule as authorized by R.S. 46:153 and pursuant to Title XIX of the

Social Security Act and as directed by the 1997-98 General Appropriation Act, which states:

"The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including, but not limited to pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law."

This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953(B) et seq., and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Medicaid Program published reimbursement methodology for hospital services including long-term acute hospitals under specialty hospital peer groups in the June 20, 1994 rule (*Louisiana Register*, Volume 20, Number 6), and subsequently amended the percentile used to establish rates at the lowest blended per diem rate for each specialty hospital category without otherwise changing the methodology (*Louisiana Register*, Volume 22, Number 1). Reimbursement for psychiatric treatment in long-term acute hospitals was later disjoined from the methodology for other types of services to be provided at the same prospective per diem rate established for psychiatric treatment facilities (*Louisiana Register*, Volume 23, Number 2).

The emergency rule alters the percentile at which the components used in calculation of the rate for services other than psychiatric services provided by a long-term hospital are considered. Under this methodology, the per diem rate is set based on the 30th percentile facility in the categories of operating costs, movable equipment, and fixed capital rather than the weighted average. The emergency rule does not otherwise alter the factors considered in setting rates or the calculations performed, nor does it affect criteria for participation, service quality expectations, or reporting requirements.

This action is necessary to avoid a budget deficit in the medical assistance programs. It is estimated that total savings resulting from implementation of this emergency rule for SFY 1997-1998 will be approximately \$9,234,731.

#### **Emergency Rule**

Effective August 1, 1997, inpatient services, excluding psychiatric services, provided by long-term care hospitals will be reimbursed at a per diem rate based on the 30th percentile facility by cost category as reported on the as-filed cost report for the year ending between July 1, 1995 and June 30, 1996. Cost categories include operating costs, movable equipment, and fixed capital. Costs are trended forward to the midpoint of the rate year using the lowest of the DRI Type Hospital Market Basket Index, the Consumer Price Index—All Urban Consumers, or the Medicare PPS Market Basket Index.

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 responsible for responding to inquiries regarding this emergency rule. A copy of this emergency rule is available at parish Medicaid offices for review by interested parties.

Bobby P. Jindal  
Secretary

9708#036

## **DECLARATION OF EMERGENCY**

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

**Private Intermediate Care Facility for  
Mentally Retarded Qualifying Loss Review**

The Department of Health and Hospitals, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This emergency rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B) et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing established reimbursement methodology for private ICF-MR facilities (*Louisiana Register*, Volume 15, Number 10). The department has determined it is necessary to amend the rule to incorporate a qualifying loss review process for intermediate care facilities for mentally retarded seeking an adjustment to the per diem rate. This action is necessary to protect the citizens of Louisiana from an imminent peril to their health and welfare that would result if they were unable to continue to receive necessary services in intermediate care facilities for the mentally retarded. It is anticipated that the implementation of this emergency rule will increase expenditures by approximately \$900,000 for fiscal year 1997-98.

#### **Emergency Rule**

Effective August 2, 1997, the Department of Health and Hospitals, Bureau of Health Services Financing establishes a qualifying loss review process for intermediate care facilities for mentally retarded (ICFs/MR) seeking an adjustment to the per diem rate. Qualifying loss in this context refers to that estimated amount by which the facility's cost for the affected rate period exceeds the anticipated Title XIX Medicaid reimbursement. Cost in this context means a facility's cost incurred in providing covered services to Title XIX Medicaid recipients, as calculated in the relevant definitions governing cost reporting.

#### **XI. Qualifying Loss Review Process**

##### **A. Basis for Administrative Review**

1. **Permissible Basis.** Except in cases where the basis for the facility's appeal is limited to a claim that rate-setting methodologies or principles of reimbursement established under the reimbursement plan were incorrectly applied, or that incorrect data or erroneous calculations were used, the department will not award additional reimbursement to a facility unless the facility demonstrates that the estimated reimbursement based on its prospective rate is less than 95 percent of the estimated costs to be incurred by the facility in providing Medicaid services during the period the rate is in effect in compliance with the applicable state and federal laws related to quality and safety standards.

2. **Basis Not Allowable.** The following matters are not subject to a qualifying loss review:

- a. the methodology used to establish the per diem;
- b. the use of audited and/or desk reviews to determine allowable costs;
- c. the economic indicators used in the rate setting methodology;
- d. rate adjustments related to changes in federal or state laws, rules or regulations (e.g., minimum wage adjustments).

**B. Request for Administrative Review.** Any intermediate care facility for the mentally retarded (hereafter referred to as facility) seeking an adjustment to the per diem rate shall submit a written request for administrative review to the director of Institutional Reimbursements (hereafter referred to as director) in the Department of Health and Hospitals (hereafter referred to as department).

1. **Time Frames**

a. Requests for administrative review must be received by DHH within 30 days of either the notification of rate reduction or promulgation of this rule, whichever is later. The receipt of the letter notifying the facility of its rates will be deemed to be five days from the date of the letter.

b. The department shall acknowledge receipt of the written request within 30 days after actual receipt.

c. The director shall notify the facility of his decision within 60 days after receipt of all necessary documentation, including additional documentation or information requested after the initial request is received.

d. If the facility wishes to appeal the director's decision, the appeal request must be received by the Bureau of Appeals within 30 days after receipt of the written decision of the director. The receipt of the decision is deemed to be five days from the date of the decision.

2. **Content of the Request.** The facility shall bear the burden of proof in establishing the facts and circumstances necessary to support a rate adjustment. Any costs that the provider cites as a basis for relief under this provision must be calculable and auditable.

a. **Basis of the Request.** Any facility seeking an adjustment to the per diem rate must specify all of the following:

- 1) the nature of the adjustment sought;
- 2) the amount of the adjustment sought;
- 3) the reasons or factors that the facility believes justify an adjustment.

b. **Financial Analysis.** An analysis demonstrating the extent to which the facility is incurring or expects to incur a qualifying loss shall be provided by the facility unless the basis for review is one of the following:

- 1) the rate setting methodology or criteria for classifying facilities was incorrectly applied; or
- 2) incorrect data or erroneous calculations were used in establishment of the facility's per diem; or
- 3) the facility has incurred additional costs because of a catastrophe.

**C. Basis for Rate Adjustment**

1. **Factors Considered.** The department shall award additional reimbursement to a facility that demonstrates by substantiating evidence that:

- a. the facility will incur a qualifying loss;
- b. the loss will impair a facility's ability to provide services in accordance with state and federal health and safety standards;
- c. the facility has satisfactorily demonstrated that it has taken all appropriate steps to eliminate management practices resulting in unnecessary expenditures; and
- d. the facility has demonstrated that its unreimbursed costs are generated by factors generally not shared by other facilities in the facility's bed size Level of Care (LOC).

2. **Determination to Award Relief.** In determining whether to award additional reimbursement to a facility that has made the showing required, the director shall consider one or more of the factors and may take any of the actions described below:

a. the director shall consider whether the facility has demonstrated that its unreimbursed costs are generated by factors generally not shared by other facilities in the facility's bed size LOC. Such factors may include, but are not limited to, extraordinary circumstances beyond the control of the facility; or

b. the director may consider and may require the facility to provide financial data, including, but not limited to, financial ratio data indicative of the facility's performance quality in particular areas of operations; or

c. the director shall consider whether the facility has taken every reasonable action to contain costs on a facility-wide basis. In making such a determination the director may require the facility to provide audited cost data or other quantitative data and information about actions that the facility has taken to contain costs.

**D. Awarding Relief.** The director shall make notification of the decision to award or not award relief in writing.

1. **Adverse Decision**

a. **Basis**

1) The director may determine that the review request is not within the scope of the purpose for qualifying loss review.

2) The director may determine that the information presented does not support the request for rate adjustment.

b. Adverse decisions may be appealed to the Office of the Secretary, Bureau of Appeals for the Department of Health and Hospitals, P.O. Box 4183, Baton Rouge, Louisiana 70821-4183, within 30 days of receipt of the decision.

2. **Awarding Relief**

a. **Action by Director.** In awarding relief under this provision, the director shall:

1) make any necessary adjustment so as to correctly apply the reimbursement methodology to the facility submitting the appeal; or to correct calculations, data errors, or omissions; or

2) increase the facility's per diem rate by an amount that can reasonably be expected to ensure continuing access to sufficient services of adequate quality for Title XIX Medicaid recipients served by the facility.

b. **Scope of Decisions.** Decisions by the director to recognize omitted, additional or increased costs incurred by

any facility; to adjust the facility rates; or to otherwise award additional reimbursement to any facility shall not result in any change in the bed size LOC per diem for the remaining facilities in the bed size LOC, except the department may adjust the per diem if the facilities receiving adjustment comprises over 10 percent of total utilization for that bed size LOC based on the latest audited and/or desk reviewed cost reports. Should a single facility that is an entity under common ownership or control with another facility or groups of facilities be awarded relief, all facilities under common ownership or control with the facility awarded relief shall be subject to audit and cost settlement up to, but not over, the amount of their rates.

c. **Effective Date.** The effective date of the adjustment shall be the later of:

- 1) the date of occurrence of the rate change upon which the rate appeal is in response; or
- 2) the effective date of this emergency rule.

d. **Limitations.** The director shall not award relief to provider over 95 percent of appellant facility's cost coverage determined by inflationary trending of the year on which rates are based. The rate adjustment shall also be limited to no more than the amount of the rate for the previous rate year. Any facility awarded relief shall be audited and cost settled up to, but not over, the amount of the adjusted rate. Should a single facility that is an entity under common ownership or control with another facility or group of facilities be awarded relief, all facilities under common ownership or control with the facility awarded relief will be subject to audit and cost settlement up to, but not over, the amount of their rates.

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

Bobby P. Jindal  
Secretary

9708#037

## DECLARATION OF EMERGENCY

### Department of Public Safety and Corrections Board of Pardons

Clemency Filing and Processing  
(LAC 22:V.Chapter 1)

Pursuant to the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 15:572 et seq., the Board of Pardons, at its meeting of August 5, 1997, adopted the following emergency rules and procedures for processing and filing for clemency (pardon or commutation of sentence to include restoration of parole and/or goodtime). It is specifically provided that rules previously adopted and adhered to, unless included herein, are void.

## Title 22 CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

### Part V. Board of Pardons

#### Chapter 1. Applications

##### §101. General

A. Any completed application will be considered for hearing by the board the first Tuesday of each month. Should the first Tuesday fall on a legal holiday the board will meet the following Tuesday.

B. Applications must be received in the Board of Pardons office by the 15th of the month to be placed on the docket for consideration the following month.

C. Four members of the board shall constitute a quorum for the transaction of business, and all actions of the board shall require the favorable vote of at least four members of the board.

D. Any offender sentenced to death shall submit an application within one year from the date of the direct appeal denial.

E. Any offender sentenced to life may not apply until he has served 15 years from the date of sentence, unless he has sufficient evidence which would have caused him to have been found not guilty.

F. No application will be considered by the board until it deems the application to be complete in accordance with the rules and procedures in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.1 and 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 23:

##### §103. Filing Procedure

###### A. All Applicants

1. Every application must be submitted on the form approved by the Board of Pardons and must contain the following information:

- a. name of applicant;
- b. prison number [Department of Corrections (DOC) number];
- c. date of birth;
- d. race/sex;
- e. education (highest grade completed);
- f. age at time of offense;
- g. present age;
- h. offender class;
- i. place of incarceration, (incarcerated applicant only);
- j. parish of conviction/judicial district/court docket number;
- k. offense(s) charged, convicted of or plead to;
- l. parish where offense(s) committed;
- m. date of sentence;
- n. length of sentence;
- o. time served;
- p. prior parole and/or probation;
- q. when and how parole or probation completed;
- r. prior clemency hearing/recommendation/approval;
- s. reason for requesting clemency;
- t. relief requested and narrative detailing the events surrounding the offense;

u. institutional disciplinary reports (incarcerated applicants only) total disciplinary reports, number within the last 12 months, nature and date of last violation, and custody status.

2. The application shall be signed and dated by applicant and shall contain a prison or mailing address and home address.

3. An application must be completed; if any required information does not apply the response should be "NA".

B. In addition to the information submitted by application, the following required documents must be attached as they apply to each applicant.

1. Incarcerated Applicants. Any applicant presently confined in any institution must attach a current master prison record and time computation/jail credit worksheet and have the signature of a classification officer verifying the conduct of the applicant as set out in §103.A.1.u.

2. Parolees. Applicants presently under parole supervision or who have completed parole supervision must attach a copy of their master prison record or parole certificate.

3. Probationers. Applicants presently under probation supervision or who have completed probationary period must attach a certified copy of sentencing minutes or automatic first offender pardon.

4. First Offender Pardons [R.S. 15:572(B)]. Applicants who have received an Automatic First Offender Pardon must attach a copy of the Automatic First Offender Pardon.

C. No additional information or documents may be submitted until applicant has been notified that he/she will be given a hearing unless applicant has a life sentence and has served less than 15 years and has documentation proving innocence. The Board of Pardons will not be responsible for items submitted prior to notification that a hearing will be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 23:

#### **§105. Discretionary Powers of the Board**

A. The Board of Pardons at its discretion may deny any applicant a hearing for any of the following reasons: serious nature of the offense; insufficient time served on sentence; insufficient time after release; proximity of parole/good time date; institutional disciplinary reports; probation/parole-unsatisfactory/violated; past criminal record; or any other factor determined by the board. However, nothing in this Chapter shall prevent the board from hearing any case.

B. Any applicant denied under this Chapter shall be notified in writing of the reason(s) for denial and thereafter may file a new application two years from date of the letter of denial. Any applicant with a life sentence denied after August 15, 1997 may reapply six years after the initial denial; three years after the subsequent denial; and every two years thereafter.

C. Any fraudulent documents or information submitted by applicant will result in an automatic denial by the board and no new application will be accepted until four years have elapsed from the date of letter of denial. Any lifer denied

because of fraudulent documents may reapply 10 years from the date of letter of initial denial; seven years if subsequent denial; and six years of denials thereafter.

D. In any matters not specifically covered by these rules, the board shall have discretionary powers to act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 23:

#### **§107. Contact with the Board of Pardons**

A. Contact with the Board of Pardons or any member is prohibited except by appearing/testifying at a public hearing or by written letter addressed to the Board of Pardons.

B. If a board member is improperly contacted, he/she must immediately notify the individual that the contact is illegal. The letter must be accompanied by a copy of R.S. 15:573.1, and the contact must be reported to the other board members.

C. Any prohibited contact after an individual has been informed of the prohibition as provided in §107.B shall be fined not more than \$500 or imprisoned for not more than six months or both.

D. All letters in favor of or opposition to pardon, clemency, or commutation are subject to public inspection. Exceptions to this Section are:

1. letters from any victim of a crime committed by the inmate being considered for pardon, clemency, or commutation of sentence, or any person writing on behalf of the victim;

2. any letters written in opposition to pardon, clemency, or commutation of sentence;

E. All letters written by elected or appointed public officials in favor of or opposition to pardon, clemency, or commutation of sentence received after August 15, 1997 are subject to public inspection and shall be recorded in a central register maintained by the board. The register shall contain, the name of the individual whose pardon, clemency, or commutation of sentence is subject of the letter, the name of the public official who is the author of the letter and the date the letter was received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:573.1, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1062 (December 1990), amended LR 23:

#### **§109. Hearing Granted**

A. After notice to an applicant that a hearing has been granted, the applicant must provide the Board of Pardons office with proof of advertisement within 90 days from the date of notice to grant a hearing. Advertisement must be published in the official journal of the parish where the offense occurred. This ad must state:

"I, (applicant's name), DOC number, have applied for clemency" and must be published for three days within a 30-day period without cost to the Department of Public Safety and Corrections, Corrections Services, Board of Pardons.

B. Applicant may submit additional information, e.g., letters of recommendation and copies of certificates of achievement and employment/residence agreement.

C. All letters in support of applicant's request for clemency are subject to public inspection.

D. All letters in support of and/or opposition to authored by an elected or appointed public official are subject to public inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4, 15:574.12 and 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1063 (December 1990), amended LR 23:

#### **§111. Public Hearing Dates**

A. The board will meet the first Tuesday of each month to determine which applicants will receive a hearing. Should the first Tuesday fall on a legal holiday the board will meet the following Tuesday.

B. The board shall also meet at the discretion of the chairman to act on those applications granted a hearing under §103 when cases have been deemed ready to hear, and to transact such other business as deemed necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.1(C) and 15:572.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 16:1063 (December 1990), amended LR 23:

#### **§113. Notice of Public Hearings**

A. After receipt of all documents required by §§103 and 109.A and the clemency investigation from the appropriate probation and parole district, the board shall set the matter for public hearing.

B. At least 30 days prior to public hearing date, the board shall give written notice of the date, time and place to the following:

1. the district attorney and sheriff of the parish in which the applicant was convicted; and, in Orleans Parish, the superintendent of police;

2. the applicant;

3. the victim who has been physically or psychologically injured by the applicant (if convicted of that offense), and the victim's spouse or next of kin, unless the injured victim's spouse or next of kin advises the board, in writing, that such notification is not desired;

4. the spouse or next of kin of a deceased victim when the offender responsible for the death is the applicant (if convicted of that offense), unless the spouse or next of kin advises the board, in writing, that such notification is not desired;

5. the Crime Victims Services Bureau of the Department of Public Safety and Corrections; and

6. any other interested person who notifies the Board of Pardons in writing, giving name and return address.

C. The district attorney, injured victim, spouse or next of kin, and any other persons who desire to do so shall be given a reasonable opportunity to attend the hearing. The district attorney or his representative, victim, victim's family, and a victim advocacy group, may appear before the Board of Pardons by means of telephone communication from the office of the local district attorney.

D. Only three persons in favor, to include the applicant and three in opposition, will be allowed to speak at the

hearing. However, there is no limit on written correspondence in favor of and/or opposition to the applicant's request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4 and 15:574.12(G) and R.S. 44:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Correction, Board of Pardons, LR 16:1063 (December 1990), amended LR 23:

#### **§115. Denials by Board After Public Hearing**

A. The board shall notify the applicant of the denial. Applicant may submit a new application two years after the date of letter of denial. Any applicant serving life may apply six years after initial denial, three years after subsequent denial and thereafter every two years.

B. The board shall terminate hearing should the applicant become disorderly, threatening or insolent. Any hearing terminated due to applicant's disorderly, threatening or insolent behavior is an automatic denial; and the applicant may re-apply four years from the date of hearing, except those serving life sentence who may reapply 10 years from the date of initial hearing termination, seven years from the subsequent hearing termination and six years from hearing termination thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 23:

#### **§117. Denial—No Action Taken by Governor after Favorable Recommendation**

A. The board shall notify the applicant after its receipt of notification that favorable recommendation was denied or no action was taken by the governor. Applicant may submit a new application two years from the date of the letter of denial or notice of no action.

B. An applicant who has been paroled, released under good time parole supervision, or released from sentence within one year of the date of letter of denial or notice of no action by the governor, may submit a new application three years after the date of release from confinement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 23:

#### **§119. Governor Grants**

The Office of the Governor will notify the applicant if any clemency is granted. Applicant may submit a new application for additional relief four years from the date of granted notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:572.4

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Pardons, LR 23:

Interested persons may submit written comments to Sally L. McKissack, Chairman, Board of Pardons, Box 94304, Baton Rouge, LA 70804-9304. Comments will be accepted through the close of business, 4:30 p.m., September 15, 1997.

Sally L. McKissack  
Chairman

9708#087

# DECLARATION OF EMERGENCY

## Department of Public Safety and Corrections Corrections Services

### Juvenile Transfer to Adult Facility (LAC 22:I.335)

The Department of Public Safety and Corrections, Corrections Service, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) in order to implement the provisions of R.S. 15:902.1 and adopts the following emergency rule, effective August 4, 1997.

Emergency rulemaking is necessary as the backlog of juveniles pending assignment to secure state correctional facilities has reached crisis proportions. R.S. 15:902.1 authorizes the transfer of certain adjudicated juvenile delinquents to adult facilities and procedures have been developed to implement such transfers. Implementation of the provisions of the act allows for an immediate reduction in the backlog.

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

#### TITLE 22

### CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

#### Part I. Corrections

### Chapter 3. Adult and Juvenile Services

#### Subchapter A. General

### §335. Juvenile Transfer to Adult Facility

A. Purpose. To establish the secretary's policy regarding the limited transfer of juvenile offenders 17 years of age or older to adult facilities.

B. To Whom This Regulation Applies. LAC 22:I.335 is applicable to the deputy secretary, assistant secretaries, wardens, and director of the Division of Youth Services of the Department of Public Safety and Corrections.

#### C. Definitions

*Adult*—an individual convicted by a criminal court and sentenced to the custody of the Department of Public Safety and Corrections (DPS&C).

*Disposition*—the written order of the juvenile court, following adjudication, which specifies the court's sentence.

*Juvenile*—an individual who is adjudicated delinquent by a judge exercising juvenile jurisdiction and sentenced to the custody of the DPS&C.

#### D. Policy

1. It is the secretary's policy, in accordance with R.S. 15:902.1, to authorize the limited transfer of juveniles adjudicated delinquent to adult facilities when the juveniles have attained the age of 17 years *and* are otherwise eligible as defined by this regulation.

2. Juvenile offenders who are adjudicated delinquent for an offense that, if committed by an adult, could not result in a sentence at hard labor, are not eligible for transfer.

3. Generally, juvenile offenders will be transferred to one of the following adult facilities:

- a. Adult Reception and Diagnostic Center (ARDC);
- b. Elayn Hunt Correctional Center (EHCC);

- c. Wade Reception and Diagnostic Center (WRDC);
- d. David Wade Correctional Center (DWCC);
- e. Louisiana Correctional Institute for Women (LCIW).

4. Juvenile offenders in adult facilities will not have a parole or diminution of sentence release date.

a. They will only have a "full term date." This date will be either:

- i. their twenty-first birthday;
- ii. their eighteenth birthday if the crime was committed before their thirteenth birthday and it is not a crime enumerated under *Louisiana Children's Code*, Article 897.1;
- iii. the date upon which the juvenile has completed the period of commitment as specified in the judgment of the juvenile court; or
- iv. the date which reflects the maximum term that an adult could receive if sentenced for the same offense, whichever is earlier.

b. If the period of commitment specified by the juvenile court exceeds the twenty-first birthday, the eighteenth birthday under circumstances outlined, or the maximum term for which an adult could be sentenced for the same crime, then the Office of Youth Development and the Headquarters Legal Section should be notified immediately.

5. Absent special statutory or regulatory restrictions to the contrary, juveniles in adult facilities will participate in all work, education, and other rehabilitative programs on the same basis as adults and will be subject to the same classification and disciplinary processes as adults, including custody status determination. Security supervision and security practices will also be the same for juvenile offenders in adult facilities as for adult inmates.

6. Records of juveniles housed in adult facilities shall be confidential and information may not be disclosed to *anyone* except in accordance with department Regulation No. B-03-003, "Access to and Release of Juvenile Offender and Ex-Offender Records", as set forth in LSA-R.S. 15:574.12 and *Louisiana Children's Code*, Article 412.

#### E. Procedures

1. A classification committee will be formed at all juvenile facilities to review offenders for eligibility and suitability for transfer and to make appropriate recommendations to the warden. It will be the responsibility of this committee to review all relevant information.

a. The following variables should be considered by the classification committee when evaluating a juvenile offender for possible transfer to an adult facility:

- i. chronological age of 17 years or older;
- ii. emotional and physical maturity;
- iii. disciplinary history and potential to disrupt juvenile institutional operations;
- iv. potential to benefit from educational programs;
- v. potential to benefit from other programs;
- vi. offenders diagnosed with mental health and/or medical special needs who can be better served in an adult facility;
- vii. offenders who pose a threat to security, i.e. who are considered escape risks, who have exhibited violent behavior, who are committed for serious offense(s), or who have an extensive criminal history;

viii. to accomplish one of the following objectives:

- (a). minimize risk to the public;
- (b). minimize risk to institutional staff;
- (c). minimize risk to other offenders.

b. Disciplinary history may impact the recommendation, but the transfer itself is not a disciplinary sanction or disciplinary activity. The disciplinary committee can refer offenders to the classification committee for review.

2. The warden of each juvenile facility will review the recommendation made by the classification committee and will make the final determination relative to transfer. The secretary and assistant secretaries will be notified of any transfer. In addition, the warden will notify the appropriate juvenile judge, Division of Youth Services Office, the legal guardian, and the classification administrator at ARDC of the proposed transfer.

3. Notification to the classification administrator at ARDC should include pertinent information, e.g., the Juvenile Information Reporting Management System (JIRMS) master record, judicial commitment documents, classification committee report and recommendation, and warden's decision. ARDC PreClass Section will then assign a unique six digit Department of Corrections (DOC) number to each juvenile-in-adult custody, (such number will begin with the numeral seven followed by the juvenile's original JIRMS number), update the CAJUN II information, and establish the adult institutional record prior to transfer (except in emergency cases). The classification administrator will schedule the date of transfer and will notify the appropriate juvenile institution.

4. The sending facility will be responsible for the transportation of the offender to the appropriate receiving institution and will provide all institutional and medical records at the time of transfer in accordance with department Regulation No. B-06-001, "Health Care." The offender's personal funds should be transmitted by check at the time of transfer or as soon as possible thereafter. In addition, the JIRMS transfer screen will be updated to reflect the transfer and will be subsequently utilized for inquiry purposes.

5. Once transferred to an adult facility, a juvenile will not be returned to a secure juvenile facility within the DPS&C. In addition, any subsequent placement in a nonsecure residential juvenile program would generally be considered inappropriate.

6. Initial evaluation to determine appropriate housing while in the reception process should include evaluation of emotional and physical maturity.

7. ARDC, WRDC, or LCIW will conduct a full evaluation in accordance with department regulations and ACA Standards to determine subsequent placement at EHCC or DWCC (or suitable housing assignment at LCIW). The evaluation will include, but is not limited to, the following:

- a. emotional and physical maturity to evaluate the need for assignment to Level 1 or Level 2 protective custody;
- b. review of information previously generated by JRDC, as available;
- c. history of gang affiliation and prior juvenile institutional assignment and security history;
- d. special educational needs or other programming

needs and the appropriateness of assignment to academic and/or vocational programs;

e. medical needs, including substance abuse assessment, and assignment of an appropriate medical level of care;

f. mental health needs with particular emphasis on suicide potential and assignment of an appropriate mental health level of care;

g. consideration of geographical location.

8. Upon completion of evaluation, the Transfer Section at ARDC will schedule transfer to the appropriate permanent facility.

9. The receiving institution will assign housing and provide services as set forth in department regulations and American Correctional Association (ACA) Standards. The records office of the receiving institution will maintain the juvenile institutional record and the adult inmate record and will update the CAJUN database. Upon discharge, all institutional records will be returned to the Juvenile Reception and Diagnostic Center at Jetson Correctional Center for Youth.

10. The adult facility must report the location and condition of the juvenile to the juvenile court every six months (or more frequently if requested). This format may be utilized to make early release recommendations as appropriate.

11. Sex offender notifications are generally not applicable to juvenile offenders housed in adult facilities. Other crime victim notice requirements for juveniles as indicated in department Regulation No. C-01-007, "Crime Victims Services Bureau" are applicable.

12. Visiting lists will be established pursuant to the provisions of department Regulation No. C-03-006, "Inmate Visitation." These transfers are to be considered as new admissions for the purposes of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:902.1.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 23:

Richard L. Stalder  
Secretary

9708#038

## **DECLARATION OF EMERGENCY**

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

**King Mackerel Commercial Closure**

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

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

Effective 12:01 a.m., August 9, 1997, the commercial fishery for king mackerel in Louisiana waters will close and remain closed until 12:01 a.m., July 1, 1998. Nothing herein shall preclude the legal harvest of king mackerel by legally licensed recreational fishermen. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell king mackerel. Effective with the closure, no person shall possess king mackerel in excess of a daily bag limit. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing king mackerel taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.4.

The secretary has been notified by the Gulf of Mexico Fishery Management Council and the National Marine Fisheries Service that the commercial quota for king mackerel in the western Gulf has been reached, and the season closure is necessary to prevent overfishing of this species.

James H. Jenkins, Jr.  
Secretary

9708#029

**DECLARATION OF EMERGENCY**

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

**Deer Season (Either Sex)—1997-98**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of R.S. 56:115, the secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following emergency rule.

A declaration of emergency is necessary to allow for hunting of "either sex" deer. The final rule for the 1997-98 hunting seasons was formally adopted at the July commission meeting with the "either sex" seasons in the below-mentioned areas closed. The commission closed "either sex" hunting in the above described areas in response to HB 1316. This legislation has subsequently been vetoed by Governor Foster and it is in the best interest of deer management to allow "either sex" hunting in these areas. There is not sufficient time to adhere to the Administrative Procedure Act and allow for "either sex" hunting this fall. Dates and other pertinent information shall appear in the 1997-98 Louisiana hunting regulations pamphlet.

**Either Sex Hunting**

"Either sex" hunting in the following areas shall be open:

Parish	Portion Opened	Weapon Type Allowed (Archery, Muzzle-loader, Modern Firearm)	Season Dates
Caldwell	Entire Parish	All weapon types	AREA 1 Nov 22-23 Nov 28-30  AREA 2 Oct 25-26 Nov 28-30
Catahoula	That portion of Representative District 20 designated as Precincts 1-1, 1-2, 2-1, 2-2, 3-1, 3-2, 4-1, 4-2, 5-1, 5-2, 6-1, and 8-1	All weapon types	Nov 22-23 Nov 28-30
Concordia	That portion of Representative District 20 designated as Precincts 5-3 and 5-4	All weapon types	Nov 22-23 Nov 28-30 Dec 6-7 Dec 13-14
Franklin	Entire Parish	All weapon types	Nov 22-23 Nov 28-Dec 3

The aforementioned season dates, bag limits and shooting hours will become effective on October 1, 1997 and extend through sunset on February 2, 1998.

Daniel J. Babin  
Chairman

9708#056

**DECLARATION OF EMERGENCY**

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

**Early Migratory Bird Season—1997-98**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of R.S. 56:115, the secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following emergency rule.

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

The below mentioned season dates, bag limits and shooting hours will become effective on September 1, 1997 and extend through sunset on February 28, 1998.

The hunting seasons for early migratory birds during the 1997-98 hunting season shall be as follows:

**MIGRATORY BIRDS OTHER THAN WATERFOWL**

- DOVE: Split Season, Statewide, 70 days  
September 6 - September 14  
October 18 - November 17  
December 13 - January 11  
Daily bag limit 12, possession limit 24
  - TEAL: September 20 - September 28  
Daily bag limit 4, possession limit 8, Blue-winged, Green-winged and Cinnamon teal only. Federal and state waterfowl stamps required.
  - RAILS: Split Season  
September 20 - September 28  
November 8 - January 7
  - KING AND CLAPPER: Daily bag limit 15 in the aggregate, possession 30.
  - SORA AND VIRGINIA: Daily bag and possession 25 in the aggregate.
  - GALLINULES: Split season  
September 20 - September 28  
November 8 - January 7  
Daily bag limit 15, possession limit 30
  - SNIPE: November 8 - February 22  
Daily bag limit 8, possession limit 16
  - WOODCOCK: December 18 - January 31  
Daily bag limit 3, possession 6
- SHOOTING HOURS**  
Teal, Rail, Gallinule, Snipe and Woodcock: one-half hour before sunrise to sunset.  
Dove: one-half hour before sunrise to sunset except noon to sunset on September 6-7, October 18-19, and December 13-14.

Daniel J. Babin  
Chairman

9708#057

**DECLARATION OF EMERGENCY**

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

**Fall 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 allows 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, the Wildlife and Fisheries Commission does hereby set the 1997 Fall Inshore Shrimp Season to open as follows:

Zone 1, that portion of Louisiana's inshore waters from the Mississippi State line westward to the eastern shore of South Pass of the Mississippi River; 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; 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.

All to open at official sunrise August 18, 1997.

The commission also hereby sets the closing date for the 1997 Fall Inshore Shrimp Season at official sunset Sunday, December 14, 1997 except in Breton and Chandeleur Sounds in Zone 1, as described in R.S. 56:495.1.A(2), which shall remain open until 6 a.m., April 1, 1998. The commission also grants authority to the secretary of the Department of Wildlife and Fisheries to change the closing date if biological and technical data indicate the need to do so or if enforcement problems develop.

Daniel J. Babin  
Chairman

9708#060

**DECLARATION OF EMERGENCY**

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

**Muzzleloader Season**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under the authority of R.S. 56:115, the secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following emergency rule.

A declaration of emergency is necessary to close the muzzleloader season in these two areas to avoid conflict with the opening day of the statewide squirrel and rabbit seasons. The commission believes that allowing the muzzleloader season and the statewide squirrel and rabbit seasons to open simultaneously could result in a dangerous situation for hunters going afield on the opening weekend. The final rule for the 1997-98 hunting seasons was formally adopted at the July commission meeting and the hunting pamphlet is currently being printed. As a result, there is insufficient time to adopt this change through the normal process of the Administrative Procedure Act.

The below-mentioned season dates will become effective October 1, 1997 and extend through sunset on February 2, 1998.

**Muzzleloader Season for Areas 3 and 7**

The muzzleloader season in Areas 3 and 7 shall be changed to read as follows:

- Area 3: October 6—October 10  
December 13—December 19
- Area 7: October 6—October 10  
January 19—January 25

Daniel J. Babin  
Chairman

9708#061

**DECLARATION OF EMERGENCY**

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

**Nonresident Fishing License Fees**

In accordance with the emergency provisions of R.S. 49:953(B) and under the authority of R.S. 56:6(28), the Wildlife and Fisheries Commission hereby adopts the following emergency rule.

With the passage of Act 1236 of the 1997 Legislature, effective August 15, 1997, the only valid nonresident licenses available to the public for a period of two to three months will be the nonresident basic fishing license with a fee of \$31, and the nonresident saltwater fishing license with a fee of \$36. This Act repealed the seven-day nonresident basic fishing license and the seven-day nonresident saltwater fishing license; it also deleted the two-day combination basic and saltwater fishing licenses. This Act created a three-day saltwater fishing license with a fee of \$20, and increased the established three-day nonresident basic fishing license from \$10 to \$20. It will take two to three months to have these licenses printed and distributed statewide.

Thus, until it is possible to print and distribute these new three-day nonresident licenses, there is a need to have available nonresident trip fishing licenses. Failure to have such licenses available will serve as a severe inconvenience to the fishing public and will have dire economic impacts on the state from the loss of revenue associated with nonresident recreational fishing activity.

In lieu of a recreational fishing license, nonresidents may purchase one of the following temporary recreational fishing licenses:

- 1. a three-day basic recreational sport fishing license for a fee of \$10. This three-day license shall be valid for three consecutive days, including the day of issue.
- 2. a two-day temporary combination basic fishing and saltwater fishing license for a fee of \$23.

Daniel J. Babin  
Chairman

9708#055

**DECLARATION OF EMERGENCY**

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

**Oyster Season—1997-98**

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and 967, and under the authority of R.S. 56:433 and R.S. 56:535.1, notice is hereby given that the secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare:

- 1. The public oyster seed grounds not currently under lease, Bay Gardene Oyster Seed Reservation, Hackberry Bay, and the Sister Lake Oyster Seed Reservations will open one-half hour before sunrise September 3, 1997.
- 2. The Bay Junop Oyster Seed Reservation will remain closed for the 1997/98 oyster season.
- 3. A designated sacking only area east of the Mississippi River will open one-half hour before sunrise on September 3, 1997. The sacking only area of the public grounds is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet.
- 4. The secretary of the Department of Wildlife and Fisheries is authorized to take emergency action if necessary, to close areas if oyster mortalities are occurring, or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of shell in seed oyster loads.
- 5. The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource subsides.
- 6. The Calcasieu and Sabine Lake tonging areas will open one-half hour before sunrise on October 16, 1997 and remain open until one-half hour after sunset on April 30, 1998.
- 7. Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action.

Daniel J. Babin  
Chairman

9708#059

**DECLARATION OF EMERGENCY**

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

**Pheasant Season—1997-98**

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of R.S. 56:115, the secretary of the Department of Wildlife and Fisheries and the Wildlife and

Fisheries Commission hereby adopts the following emergency rule.

A declaration of emergency is necessary to allow for hunting of pheasants during the upcoming season which will begin in November 1997 and there is not sufficient time to meet the requirements of the Administrative Procedure Act.

The following season dates, bag limits and shooting hours will become effective on November 1, 1997 and extend through sunset on February 1, 1998.

PHEASANT SEASON FOR THE 1997-98 HUNTING SEASON	
Date:	Nov. 27 - Jan. 31
Bag Limit:	2 males only
Possession Limit:	4 males only
Shooting Hours:	one-half hour before sunrise to one-half hour after sunset
<b>AREA DESCRIPTION</b> Pheasant season restricted to the following portions of Calcasieu and Cameron parishes: that portion west of Choupique Bayou south of Highway 90 to LA 27, west of LA 27 to north boundary of Sabine NWR, north of Sabine NWR north boundary to Sabine River, east of Sabine River to Intracoastal Waterway, south of Intracoastal Waterway to Gum Cove Road, east of Gum Cove Road to LA 108, north and east of LA 108 from Gum Cove Road to Highway 90, and south of Highway 90 from Vinton to Choupique Bayou.	

Daniel J. Babin  
Chairman

9708#058

### DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission

#### Shrimp Season Closure—Zone 1

In accordance with the emergency provisions of R.S. 49:967 which allows 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 fix no less than two open seasons each year for all inside waters; and pursuant to a resolution adopted by the Wildlife and Fisheries Commission on May 1, 1997 which authorized the secretary of the Department of Wildlife and Fisheries to close the 1997 Spring Inshore Shrimp Season in any area or zone when biological and technical data indicates the need to do so, the secretary of the Department of Wildlife and Fisheries hereby declares:

The 1997 Spring Inshore Shrimp Season shall be closed in most of Zone 1 at 6 a.m., Monday, July 21, 1997.

Small white shrimp have begun to show up in department samples in portions of Zone 1 and the secretary has determined that a large portion of Zone 1 should be closed to protect these immigrating white shrimp.

The following portions of Zone 1 shall remain open until 6 a.m., Friday, August 1, 1997:

1. Lake Pontchartrain and Middle Ground, not to include any sanctuary or normally closed areas of the lake;
2. Lake Borgne and the Mississippi Sound;
3. Chef Menteur and Rigolets Passes;
4. Mississippi River Gulf Outlet; and
5. the Intracoastal Waterway from the overhead power lines at the Inner Harbor Navigation Canal east to its junction with the Mississippi River Gulf Outlet.

The passes and tributaries of these waterbodies shall be closed.

The open waters of Breton and Chandeleur Sounds as described in the menhaden rule (LAC 76:VII.307.D) shall remain open to shrimping until further notice.

Zone 3, that portion of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island to the Texas State Line, shall also remain open until further notice.

James H. Jenkins, Jr.  
Secretary

9708#005

### DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries  
Wildlife and Fisheries Commission

#### Shrimp Season Closure—Zone 3

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act, which allows the 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 fix no less than two open seasons each year for all inside waters; and a resolution adopted by the Wildlife and Fisheries Commission on May 1, 1997 which authorized the secretary of the Department of Wildlife and Fisheries to close the 1997 Spring Inshore Shrimp Season in any area or zone when biological and technical data indicates the need to do so, the secretary hereby declares:

The 1997 Spring Inshore Shrimp Season shall be closed in all of Zone 3, of Louisiana's inshore waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island west to the Louisiana/Texas State Line, at 6 a.m., Friday, July 25, 1997.

Small white shrimp have begun to show up in shrimp samples taken by department personnel throughout Zone 3. The number of white shrimp is expected to increase substantially over the next few weeks.

James H. Jenkins, Jr.  
Secretary

9708#004

# Rules

## RULE

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

**1997 Timber Stumpage Values  
(LAC 7:XXXIX.101)**

*Editor's Note:* All Agriculture and Forestry rules, found at LAC, Title 7, will be renumbered during the next few months, so that each Part (I through XLIII) will begin with a Chapter 1 and continue with sequential chapters (through Chapter 99), as needed. A revised *Louisiana Administrative Code*, Title 7, is scheduled for publication during Fall, 1997. As shown below, the *Louisiana Register* is promulgating all Title 7 emergency, proposed, and final rules under the new numbering system.

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Forestry Commission and the Department of Revenue and Taxation, Tax Commission amends rules regarding the value of timber stumpage for calendar year 1997. These rules comply with and are enabled by R.S. 47:633.

### Title 7

#### AGRICULTURE AND ANIMALS

##### Part XXXIX. Forestry

##### Chapter 1. Timber Stumpage

##### §101. Stumpage Values

The Louisiana Forestry Commission, and the Louisiana Tax Commission, as required by R.S. 47:633, determined the following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 1997:

1. Pine Trees and Timber	\$ 348.00/MBF	\$ 43.50/Ton
2. Hardwood Trees and Timber	\$ 188.58/MBF	\$ 19.85/Ton
3. Pine Chip and Saw	\$ 88.80/Cord	\$ 32.89/Ton
4. Pine Pulpwood	\$ 23.95/Cord	\$ 8.87/Ton
5. Hardwood Pulpwood	\$ 15.05/Cord	\$ 5.28/Ton

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

**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

21:930 (September 1995), LR 21:1069 (October 1995), amended by the Louisiana Forestry Commission and Louisiana Tax Commission, LR 22:581 (July 1996), LR 23:943 (August 1997).

Billy Weaver, Chairman  
Forestry Commission

Malcolm Price, Chairman  
Tax Commission

9708#039

## RULE

**Department of Agriculture and Forestry  
Office of Animal Health Services  
Livestock Sanitary Board**

**Equine Infectious Anemia and Livestock Auction  
Market Requirements (LAC 7:XXI.Chapter 5)**

*Editor's Note:* All Agriculture and Forestry rules, found at LAC, Title 7, will be renumbered during the next few months, so that each Part (I through XLIII) will begin with a Chapter 1 and continue with sequential chapters (through Chapter 99), as needed. A revised *Louisiana Administrative Code*, Title 7, is scheduled for publication during Fall, 1997. As shown below, the *Louisiana Register* is promulgating all Title 7 emergency, proposed, and final rules under the new numbering system.

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Livestock Sanitary Board has adopted LAC 7:XXI.Chapter 5.

These rules will govern the Equine Infectious Anemia control program whereby the Livestock Sanitary Board identifies and controls equine that are infected with Equine Infectious Anemia and removes infected equine from the population in order to prevent the spread of Equine Infectious Anemia.

These rules comply with the statutory law administered by the Livestock Sanitary Board, R.S. 3:2091-2222, including R.S. 3:2093(1), the enabling legislation.

A preamble to the rules is contained in §513 ("Statement of Purpose") of the rules.

### Title 7

#### AGRICULTURE AND ANIMALS

##### Part XXI. Diseases of Animals

##### Chapter 5. Equine

##### §511. Definitions

Wherever in these EIA rules and regulations the masculine is used, it includes the feminine and vice versa; wherever the singular is used, it includes the plural and vice versa.

*Approved EIA Testing Laboratory*—a laboratory which is authorized by the board to conduct the EIA test analysis on equine blood samples.

*Board*—the Louisiana State Livestock Sanitary Board.

*Buyer*—any person who purchases EIA positive or S branded equine for slaughter.

*Direct to Slaughter*—for shipment or movement from the premises of origin directly to an approved slaughter establishment for the purpose of slaughter without any stopping or diversion except as is necessary or incidental to such shipment.

*EIA Negative Equine*—equine that is currently tested for EIA with a negative test result in accordance with these EIA rules and regulations.

*EIA Positive Equine*—an equine that has completed an EIA test with a positive test result.

*EIA Quarantine*—the secure and physical isolation of EIA positive equine, S branded equine or both in a specific confined area the perimeter of which is at all times at least 200 yards away from all other equine.

*EIA Test*—has the same meaning as test for EIA defined hereinafter.

*Equine*—any member of the family of *Equidae* including horses, mules, burros, donkeys, asses, and zebra.

*Equine Infectious Anemia*—a contagious and infectious disease of equine caused by a lentivirus the symptoms of which can include intermittent fever, depression, weakness, edema, anemia and sometimes death. The disease is also known as Swamp Fever and is sometimes referred to herein as "EIA."

*Equine Quarantined Holding Area*—an area where the secure and physical isolation of only EIA positive equine, S branded equine, or both are confined, the perimeter of which provides for separating by at least 440 yards from all other equine that are not EIA positive equine, S branded equine, or both.

*Exposure to EIA*—in the presence of an EIA positive equine.

*Foal*—an equine less than 1 year old.

*In the Presence of*—coming within 200 yards of the animal or object referred to.

*Owner*—any person who, in any form, possesses, has custody of, or has an ownership interest in an equine. A person is an owner during the period of time of the described relationship. A parent or tutor of an owner who is a minor is also an owner during the period of time that the owner-parent or tutor's minor resides with the parent or tutor. A curator of an owner who has been interdicted is an owner during the period of time that the interdict is an owner.

*Permanent Individual Equine Identification*—one of the following methods of identifying equine:

- a. operational implanted electronic identification transponder with individual number;
- b. legible individual lip tattoo; or
- c. legible individual hot brand or freeze brand other than the brand S or 72A on the left shoulder.

*Person*—any natural person, partnership, limited partnership, limited liability company, corporation, association or any legal entity whatsoever.

*Premises*—any immovable or movable property in which or upon which an equine is, was or could be located.

*Public Livestock Market*—any place, establishment or facility commonly known as a "livestock market," "livestock

auction market," "sales ring," "stockyard," or the like, operated for compensation or profit as a public market for livestock, consisting of pens, or other enclosures, and their appurtenances, in which livestock are received, held, sold, or kept for sale or shipment.

*Quarantine*—the secure and physical isolation of equine in a specific confined area the perimeter of which is at all times at least 200 yards away from other equine.

*S Branded Equine*—an equine which has been branded with the letter S at least 3 inches in height on the left shoulder.

*Stall Barn*—a building in which equine are customarily housed.

*Test for EIA*—a test, approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, for scientifically testing equine for the presence of EIA. The test for EIA is also sometimes herein referred to as the "EIA test."

*Testing Veterinarian*—a veterinarian accredited by the United States Department of Agriculture who draws an equine's blood for an EIA test and who submits the blood sample to an approved EIA testing laboratory.

*Verification*—a written statement signed by each owner which includes the name, address, telephone number of each owner, the name of the equine, if any, the permanent individual identification of the equine, and an affirmative attestation of the date, place and the manner of ending the life of the equine.

*VS Form 10-11*—the form provided by the board or the United States Department of Agriculture utilized in EIA testing which provides for information including the name of the laboratory, the case number, the date of completion of the EIA test, the equine owner's name, address, telephone number and the permanent individual identification of the equine and the test results.

*VS Form 1-27 Permit*—a form provided, completed and issued by the board or the United States Department of Agriculture which is required before certain livestock may be moved from the premises of origin.

*Written Proof of EIA Test*—the VS Form 10-11 completed by an approved EIA testing laboratory which, when completed, provides the name of the laboratory, the case number, the date of completion of the EIA test, the equine owner's name, address, telephone number and permanent individual identification of the equine and the test results.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:943 (August 1997).

### §513. Statement of Purpose

A. The purpose of these EIA rules and regulations is to better identify and control EIA infected equine and to remove EIA infected equine from the population in order to prevent the spread of EIA. Due to the persistent incidence of EIA in the equine population, a more stringent eradication program for removal of infected equine, which includes ending the life of EIA infected equine, is necessary. These EIA rules and regulations should be liberally construed in favor of ending the life of EIA infected equine. The authority granted therein is to be exercised only in carrying out this necessary EIA eradication program.

B. It is understood that title to an equine can be difficult to discern, that custodians and possessors are frequently the only persons exercising authority over nontitled equine and, therefore, effective enforcement of these EIA rules and regulations requires that possessors, custodians, and owners of equine share responsibility for eradication of a disease that has proven destructive to the industry and to equine. It is further understood that if in the board's view effective enforcement would not be jeopardized, the board should direct enforcement against titled owners over custodians and custodians over possessors. Notwithstanding the foregoing, the board may direct enforcement against any or all owners as defined in these EIA rules and regulations in any given case as it shall deem fit in its sole and exclusive judgment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:944 (August 1997).

### §515. Obligations of Owners

Any owner of equine that are physically located in Louisiana shall timely accomplish the following mandatory requirements, except as provided in §517 herein:

1. Every owner shall have a permanent individual equine identification for each of their equine completed not later than the time of the initial test for EIA called for herein and as otherwise provided for in these EIA rules and regulations.

2. Every owner shall, at the following times, have their equine tested by an approved EIA testing laboratory with blood samples drawn by a testing veterinarian and shall maintain written proof of and the results of such tests for not less than 24 months.

a. Every owner shall have all of the owner's equine tested for EIA at least every 12 months.

b. Every owner shall have all of the owner's foals first tested for EIA no later than one year after the foals are born.

c. Every owner shall have all of the owner's equine coming into the state accompanied with written proof of said equine having been tested negatively for EIA not more than 12 months prior to the date of the equine's entry into the state.

d. Every owner shall have all equine, for which written proof of a negative EIA test cannot be provided, immediately quarantined, tested for EIA, and permanently and individually identified within 20 days of the date upon which an unfulfilled request for written proof of a negative EIA test is made by an authorized agent of the board.

e.i. Owners must test for EIA any equine, except EIA positive equine and S branded equine, that is for any length of time:

(a). in the presence of any equine quarantined holding area; or

(b). in the presence of an EIA positive equine; or

(c). on the same premises as an EIA positive equine; or

(d). on a premises with a perimeter less than 200 yards from the perimeter of the premises of an EIA positive equine.

ii. Said test shall be conducted no earlier than 30 days after the date of the EIA test of the EIA positive equine.

iii. The owners shall ensure that said test for EIA is conducted no sooner than 30 days and, to the extent possible, no later than 60 days from the last date upon which the owners' equine was in the presence of the EIA positive equine or in any of the aforementioned places, but, in any event, the said EIA test shall be conducted.

f. Every owner shall have all equine that are to have their ownership changed tested for EIA within six months prior to the change.

g.i. Every owner offering equine for sale at public livestock markets without written proof of a negative EIA test conducted within six months of sale or without permanent individual equine identification shall have the equine quarantined, fitted with permanent individual equine identification if not already so fitted, tested for EIA and the results of a negative EIA test before the equine may be removed from quarantine.

ii. All such owners shall have the blood sample drawn for the EIA test before the equine leaves the public livestock market.

iii. If no veterinarian is available for official EIA testing of equine at a public livestock market, EIA testing shall be conducted by an authorized agent of the board.

iv. Prior to the drawing of blood for the EIA test required by §515.A.2, the owner shall authorize payment of the testing fee for the EIA test to the testing veterinarian.

v. The purchaser of the equine shall pay the identification fee before the equine leaves the public livestock market.

h. Every owner offering equine for sale at public livestock markets without permanent individual equine identification shall have said equine fitted with permanent individual equine identification before said equine leaves the public livestock market.

3. Every owner shall have all of the owner's equine stabled at a racetrack governed by the Louisiana State Racing Commission which are EIA positive immediately and individually quarantined and removed from the racetrack. Owners of other equine which were in the same or directly adjacent stall barns as an EIA positive equine shall be tested for EIA. The EIA testing shall, to the extent possible, as determined by the board, be conducted no sooner than 30 days and no later than 60 days after the date upon which the EIA positive equine was removed from the presence of the equine being tested but, in any event, the said EIA test shall be conducted.

4. Every owner shall immediately, upon receipt of knowledge of a positive EIA test, quarantine and thereafter maintain quarantine of all EIA positive equine until the end of the equine's life as provided herein.

5.a. Every owner shall have all equine which test positive for EIA branded by an authorized agent of the board with a 72A brand at least 3 inches in height on the left shoulder immediately upon receipt of the positive EIA test report.

b. Upon request by the owner to the board, an owner shall be permitted to retest the EIA positive equine by a veterinarian employed by the board prior to a 72A brand being placed on the EIA positive equine.

6. In no event shall any EIA positive equine be moved from one immovable premises to another without a VS Form

1-27 Permit issued by an authorized agent of the board accompanying the EIA positive equine.

7. Every owner who receives notice of a positive EIA test shall inform all other owners of the relevant equine of the test results within 24 hours of having received notice of the EIA test results.

8.a. Every owner shall cause the ending of the life of or end the life of all equine testing positive for EIA, immediately upon notice of the positive result of the EIA test and shall provide verification of the death of such equine by written and signed statement of the owner which shall be furnished to the office of the State Veterinarian.

b. In the event any EIA positive equine is to be sold for slaughter, the owner shall secure a VS Form 1-27 Permit issued by an authorized agent of the board before the equine may be moved from the premises where the EIA positive equine was quarantined and the owner shall cause the EIA positive equine to be accompanied with the VS Form 1-27 Permit issued by an authorized agent of the board when the EIA positive equine is en route to or at the public livestock market.

c. When the equine is sold for slaughter a properly completed VS-Form 1-27 Permit may serve as the verification called for herein.

9.a. Upon written or oral request by an authorized agent of the board, all owners shall immediately make available written proof of an EIA test demonstrating compliance with the EIA testing requirements of these EIA rules and regulations. If the requested written proof is not provided to an authorized agent of the board, the equine shall be presumed to be untested.

b. When a change of possession, custody or ownership of an equine occurs, the owner transferring possession, custody or ownership shall physically transfer to the transferee written proof of the most recent EIA test of the equine transferred.

10. Every owner of equine shall provide the names, addresses and telephone numbers of all other owners, if any, to the board upon the request of an authorized agent of the board.

11. Every owner shall, without prior notice, permit and assist authorized agents of the board in the inspection of equine and inspections to determine compliance with these EIA rules and regulations, including inspection of the equine's permanent individual equine identification, inspection of the manner in which any EIA quarantine is being maintained, inspection of the collection of blood samples for EIA tests and inspections relating to the establishment of EIA quarantines.

12. All owners of an equine are responsible and liable in solido to the board for any violation of these EIA rules and regulations involving that equine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:945 (August 1997).

#### **§517. Exceptions**

A. Notwithstanding any other provision hereof, the written proof of EIA test and the requirements of these EIA rules and regulations need not include permanent individual equine

identification of equine for those equine that temporarily enter Louisiana from another state and that depart Louisiana before the passage of 12 months since such equine's last EIA test. This exception does not apply to equine offered for sale at a public livestock market. All equine, including those temporarily in Louisiana from another state that are offered for sale at a public livestock market, and their owners are subject to all requirements of §515.A.2.g including those pertaining to permanent individual equine identification.

B. Upon request by any owner, any mare or dam testing positive for EIA that is at least 270 days into term or has a nursing foal no more than 120 days of age may be quarantined to the owner's premises prior to ending the mare's or dam's life until not later than 20 days after either her foal dies or reaches an age of 120 days by which time the mare's or dam's life shall be ended. Notwithstanding the foregoing exception, all owners shall have the EIA positive mare or dam branded with a 72A brand at least 3 inches in height on the left shoulder immediately upon receipt of the EIA positive test report.

C. Notwithstanding any other provision hereof, all owners of equine which tested positive for EIA prior to February 1, 1994 shall be permitted to confine such equine to a quarantine approved by the board in lieu of ending the EIA positive equine's life. However, in the event such a quarantine is elected by the owner and such a quarantine is thereafter shown to have been violated and the board can demonstrate, after notice and hearing, that the quarantine was not, in every respect, maintained in accordance with these EIA rules and regulations and any special conditions, then, in that event, the owner shall, within 20 days of such finding, cause the ending of the life of, end the life of, or sell for slaughter any EIA positive equine so found in violation of the quarantine.

D. The seller of any equine which is sold at any public livestock market with gross proceeds from the sale being less than \$50 shall not be required to pay the testing fee required herein for the EIA test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:946 (August 1997).

#### **§521. Collection and Submission of Blood Samples**

A. All blood samples for EIA testing must be drawn by a testing veterinarian and submitted to an approved EIA testing laboratory. The seller of any equine sold at a public livestock market in which the gross proceeds from the sale are less than \$50 may request that the blood sample be drawn by authorized agents of the board, which, if granted, shall satisfy the requirements of these EIA rules and regulations in that respect.

B. Blood samples submitted to the approved EIA testing laboratory for official EIA testing shall be accompanied by and submitted with a VS Form 10-11, Equine Infectious Anemia Laboratory Test Report, signed by the testing veterinarian, with completed information as to the equine owner's name, address, telephone number, date blood sample drawn and permanent individual identification of the equine.

C. Blood samples in nonsterile tubes shall not be accepted for testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:946 (August 1997).

#### **§523. Penalties**

A. The penalty for a violation of these EIA rules and regulations shall be a fine of up to \$1,000 for each violation.

B. With regard to continuing violations, whether acts or omissions, each day a violation occurs or continues shall be a separate violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:947 (August 1997).

#### **§525. Enforcement**

In addition to those relevant provisions of law, the board may do the following, as is necessary, to carry out the board's powers and duties and to accomplish the purpose of the EIA eradication program.

1. The board may brand and permanently, individually identify equine.

2. The board may quarantine equine, EIA positive equine and equine in their presence, cause the ending of the life of EIA positive equine, end the life of EIA positive equine or cause the sale of EIA positive equine for slaughter.

3. An authorized agent of the board may enter any premises or place where equine are present during reasonable hours with or without prior notice for the purpose of determining whether these EIA rules and regulations have been violated and to inspect the equine for the presence of EIA and exposure related to EIA. A testing veterinarian employed by the board may draw blood samples from the equine present for the EIA test.

4.a. Any authorized agent of the board shall have access to, and may enter at all reasonable hours, all places of business dealing in or with equine and all places of business where books, papers, accounts, records, or other documents related to equine are maintained.

b. The board may subpoena, and any authorized agent of the board may inspect, copy, audit or investigate any of the books, papers, accounts, records, or other documents pertaining to equine, all for the purpose of determining whether there is compliance with the provisions of R.S. 3:2091-2100, and with these EIA rules and regulations.

c. The authority granted in §525.A.4.b shall also extend to books, papers, accounts, records, or other documents of persons doing business with the above referenced places of business.

5. The board may apply to a court of competent jurisdiction for a warrant to conduct any reasonable searches and seizures as is necessary to carry out the board's powers and duties not already provided for in these EIA rules and regulations.

6. The board may declare abandoned any equine with no apparent owner. The board is authorized to seize, test for EIA and fit with permanent individual identification any equine that has been declared abandoned. The board may also cause the ending of the life of, end the life of, or sell for slaughter any EIA positive equine that has been declared abandoned. Prior to any declaration of abandonment on the

grounds of having no apparent owner, the board shall make reasonable inquiry in the geographic area where the relevant equine was initially located, and such reasonable inquiry shall include placing an advertisement in no less than two publications in the print media of greatest circulation near the geographic area where the equine was found. Further, no declaration that an equine is abandoned shall be made until 15 days have passed since the last publication seeking the owner was made.

7. The board may issue written orders in preventing, controlling or eradicating EIA, and a violation of any such order shall constitute a violation of these EIA rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:947 (August 1997).

#### **§527. Fees**

A. There shall be a testing fee of not more than \$18 per EIA test at all public livestock markets. All public livestock markets shall collect the testing fee of not more than \$18 per EIA test from sellers of equine which arrive at public livestock markets untested for EIA within six months prior to the equine's sale or offering for sale. The public livestock market shall forward the testing fee to the testing veterinarian.

B. There shall be an identification fee of \$5 at all public livestock markets. All public livestock markets shall collect an identification fee of \$5 per equine from purchasers of equine for all equine which arrive at public livestock markets untested for EIA within six months prior to the equine's sale or offering for sale. The public livestock market shall forward the fee to the Louisiana Department of Agriculture and Forestry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:947 (August 1997).

#### **§529. Approved Equine Infectious Anemia Testing Laboratories**

A. No person shall operate an approved EIA testing laboratory without first obtaining approval from the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, and from the board.

B. The conditions for approving an EIA testing laboratory are as follows:

1. Any person applying for an EIA testing laboratory approval must submit a written application for approval by the board to the office of the State Veterinarian.

2. An inspection of the facility must be made by a representative of the office of the State Veterinarian who shall submit a report to the board indicating whether or not the person applying for an EIA testing laboratory approval has the facilities and equipment which are called for by the United States Department of Agriculture, currently contained in the Animal and Plant Health Inspection Service, Veterinary Services Memorandum 555.8.

3. Any person applying for an EIA testing laboratory approval must agree in writing to operate the approved EIA

testing laboratory in conformity with the requirements of the United States Department of Agriculture, currently contained in Animal and Plant Health Inspection Service, Veterinary Services Memorandum 555.8.

4. If the application is given preliminary approval by the board, the person applying will proceed with successful completion of training, examination, and inspection by the United States Department of Agriculture.

5. Laboratory check test results of the United States Department of Agriculture shall be provided to the State Veterinarian for final approval by the board.

6. All EIA testing laboratories which have been approved by the United States Department of Agriculture, prior to the effective date of this regulation, shall be deemed approved at the time this regulation goes into effect.

C.1. Approved EIA testing laboratories must maintain a work log clearly identifying each individual blood sample, EIA test result and VS Form 10-11, all of which must be preserved and available for inspection, for a period of time of not less than 24 months from the date of the EIA test.

2. Approved EIA testing laboratories must maintain on file and make available for inspection a copy of all VS 10-11 forms for a period of 24 months.

3. Approved EIA testing laboratories must at all times meet all the requirements of the United States Department of Agriculture, including those requirements currently contained in Animal and Plant Health Inspection Service, Veterinary Services Memorandum 555.8.

4. Blood samples shall be periodically collected and approved EIA testing laboratories periodically inspected by a representative of the office of the State Veterinarian with or without prior notification.

5. Approved EIA testing laboratories shall immediately report by postage prepaid U.S. first class mail, telephone and telephonic facsimile all positive EIA test results to the State Veterinarian's office.

6. The State Veterinarian shall renew the approval of approved EIA testing laboratories in January of each year, provided the approved EIA testing laboratories maintain the standards required by this regulation and by the United States Department of Agriculture, currently contained in Animal and Plant Health Inspection Service, Veterinary Services Memorandum 555.8.

7. Approved EIA testing laboratories must submit the white original of each VS Form 10-11 not less than monthly to the board.

8. Approved EIA testing laboratories may charge a fee to the testing veterinarian for conducting an EIA test.

D. All records of EIA tests conducted by an approved EIA testing laboratory shall contain the name of the approved EIA testing laboratory.

E. An approved EIA testing laboratory may have its approval canceled if the board finds that the approved laboratory has failed to meet the requirements of the EIA rules and regulations, has falsified its records or reports, or has failed to maintain the standards required by this regulation and by the United States Department of Agriculture, currently contained in Animal and Plant Health Inspection Service, Veterinary Services Memorandum 555.8.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:947 (August 1997).

### §531. Equine Quarantined Holding Area

A. Any person desiring to operate an equine quarantined holding area must file a written application for approval of the facility to the board and shall have:

1. the equine quarantined holding facility and area inspected and approved by the board; and
2. agree, in writing, to comply with these EIA rules and regulations.

B. No other equine except equine consigned for slaughter shall be kept in an equine quarantined holding area and all equine held therein shall be S branded.

C. No equine shall be kept in the equine quarantined holding area longer than 60 days by which time the life of any such equine shall be ended.

D. No equine shall be released from an equine quarantined holding area except to be delivered direct to slaughter.

E. The equine quarantined holding area shall be an area where EIA positive equine, S branded equine or both are kept at least 440 yards from all other equine at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:948 (August 1997).

### §533. Other

A. The permit for operating an equine quarantined holding area upon approval shall be issued by the board and shall be subject to renewal annually upon such terms, conditions and requirements as the initial issuance or upon terms, conditions and requirements as are necessary to carry out the purposes of these EIA rules and regulations.

B. All equine that arrive at a public livestock market, that have had a blood sample drawn for an EIA test, been fitted with a permanent individual equine identification, and that have had their fee paid, may be moved by the purchaser to the purchaser's premises and, if so moved, shall be held by the purchaser under quarantine until the EIA test results are received.

C. For purposes of these EIA rules and regulations the date of the drawing of the blood sample used for an EIA test shall be deemed the date of the conduct of the EIA test sometimes referred to as the date of the EIA test.

D. No person may import into Louisiana any equine that is EIA positive.

E. Authorized buyers for approved slaughter establishments may request that any equine purchased by the approved slaughter establishment at a public livestock market be restricted to slaughter. Upon such request, an authorized agent of the board shall place an S brand on said equine and shall issue a VS Form 1-27 Permit before the said equine may leave the public livestock market.

F. No person shall conspire with another person or aid and abet another person in the violation of these EIA rules and regulations.

G. No person shall give false information, in any form, to the board or any representative thereof.

H. No equine under EIA quarantine or quarantine may be moved except with a VS form 1-27 permit.

I. No equine under EIA quarantine or quarantine may be sold other than directly to slaughter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:948 (August 1997).

### §535. Severability

If any part of these EIA rules and regulations is declared to be invalid for any reason by any court of competent jurisdiction, said declaration shall not affect the validity of any other part not so declared.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2091-2097.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, Livestock Sanitary Board, LR 23:949 (August 1997).

Bob Odom  
Commissioner

9708#040

## RULE

### Department of Agriculture and Forestry Office of Animal Health Services Livestock Sanitary Board

#### Sanitary Disposal of Dead Poultry (LAC 7:XXI.101 and 707)

*Editor's Note:* All Agriculture and Forestry rules, found at LAC, Title 7, will be renumbered during the next few months, so that each Part (I through XLIII) will begin with a Chapter 1 and continue with sequential chapters (through Chapter 99), as needed. A revised *Louisiana Administrative Code*, Title 7, is scheduled for publication during Fall, 1997. As shown below, the *Louisiana Register* is promulgating all Title 7 emergency, proposed, and final rules under the new numbering system.

In accordance with provisions of the Administrative Procedure Act, the Department of Agriculture and Forestry, Livestock Sanitary Board amends the regulations governing the sanitary disposal of dead poultry. These rules comply with and are enabled by R.S. 3:2091 et seq.

#### Title 7

### AGRICULTURE AND ANIMALS

#### Part XXI. Diseases of Animals

### Chapter 1. General Provisions

#### §101. Definitions

\*\*\*

*Digester*—a specially designed water tight system which is buried in the ground below the frost line and has the ability and strength to hold liquid, without leakage or seepage, and is used to dispose of dead poultry through use of bacteria.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:615

(June 1985), amended LR 12:289 (May 1986), LR 12:498 (August 1986), LR 14:217 (April 1988), LR 15:811 (October 1989), LR 16:391 (May 1990), LR 17:29 (January 1991), LR 18:840 (August 1992), LR 23:949 (August 1997).

### Chapter 7. Poultry

#### §707. Sanitary Disposal of Dead Poultry

A. All commercial poultry producers are required to obtain a certificate of approval. Failure to obtain a certificate shall be considered a violation of this regulation. Certificates of approval are continuous, but subject to review and cancellation should the poultry producer fail to dispose of dead poultry in accordance with this regulation.

B. Dead poultry must be removed from the presence of live poultry without delay. The carcasses, parts of carcasses and offal must be held in covered containers until disposal is made by one of the approved methods. In no instance, however, will the storage of dead poultry be allowed to create sanitary problems. Commercial poultry producers shall be required to dispose of dead poultry by one of the following methods:

1. Disposal Pits. Disposal pits shall be constructed in a manner and design capable of providing a method of disposal of dead poultry to prevent the spread of diseases. Disposal pits that are currently in use will be allowed to operate until July 1, 1997.

2. Incinerators. Incinerators shall be constructed in a manner and design capable of providing a method of disposal of dead poultry to prevent the spread of diseases. The design and construction must be approved by an authorized representative of the Livestock Sanitary Board.

3. Rendering Plant. Dead poultry, parts of carcasses and poultry offal may be transported in covered containers to approved rendering plants. Poultry carcasses may be held on the premises of commercial poultry producers as long as the storage does not create a sanitary problem. All such methods of storage and transportation of dead poultry to approved rendering plants must be approved by an authorized representative of the Livestock Sanitary Board.

4. Composting. The design, construction, and use of compost units must be approved by an authorized representative of the Livestock Sanitary Board.

5. Digesters. Poultry digesters may be used if the following conditions are met:

a. the design, construction, location, and use of digesters must be approved by an authorized representative of the Livestock Sanitary Board;

b. the bacteria being used in the digester must be approved by an authorized representative of the Livestock Sanitary Board;

c. the digester must be maintained according to recommendations of an authorized representative of the Livestock Sanitary Board.

C. In the event of the death of more than 1 percent of broilers or 0.5 percent of pullets or breeders over four weeks of age on the same premises within a 24-hour period of time, the death of which is not known to be caused by a contagious or infectious disease, the dead poultry may be disposed of by on-site burial. The State Veterinarian's Office must be notified immediately by telephone or facsimile in the event of excessive mortality requiring on-site burial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Livestock Sanitary Board, LR 11:615 (June 1985), amended LR 17:874 (September 1991), LR 18:1355 (December 1992), LR 20:550 (August 1994), LR 23:949 (August 1997).

Bob Odom  
Commissioner

9708#021

## RULE

### Department of Economic Development Racing Commission

#### Bleeder Medication (LAC 35:I.1507)

The Racing Commission amends LAC 35:I.1507, "Bleeder Medication," to make more horses accessible/eligible to race (change from 14th to 13th day under Subsection E.1 - entry cycle is 14 days).

## Title 35 HORSE RACING

### Part I. General Provisions

#### Chapter 15. Permitted Medication

##### §1507. Bleeder Medication

A. - E. ...

1. First time, after the expiration of the 13th day he is placed on the bleeder list.

2. - 6. ...

F. - H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 6:174 (May 1980), amended LR 9:547 (August 1983), amended by the Department of Economic Development, Racing Commission LR 15:7 (January 1989), LR 23:950 (August 1997).

Paul D. Burgess  
Executive Director

9708#023

## RULE

### Department of Economic Development Racing Commission

#### Qualifications for Jockey/Apprentice Jockey; Applicant for a License (LAC 46:XLI.701 and 703)

The Racing Commission amends LAC 46:XLI.701-703, "Qualifications for Jockeys/Apprentice Jockeys" and "Applicant for a License" to eliminate probationary rides/mounts and to prevent anyone from riding while not licensed as a jockey or apprentice jockey.

## Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

### Part XLI. Horseracing Occupations

#### Chapter 7. Jockeys and Apprentice Jockeys

##### §701. Qualifications for Jockey/Apprentice Jockey

Any person desiring to participate in this state as a jockey and has never ridden in a race may be issued a jockey or apprentice jockey license upon the recommendation of the stewards granting permission to such person for the purpose of riding in two races to establish the qualifications and ability of such person for the license, provided, however:

1. such person has the qualifications of a permittee and has at least one year of experience with racing stables;

2. a licensed trainer certifies in writing to the stewards that such person has demonstrated sufficient horsemanship to be granted a jockey or apprentice jockey license;

3. the starter has schooled such person breaking from the starting gate with other horses and approves such person as capable of starting a horse properly from the starting gate in a race;

4. the stewards in their sole discretion are satisfied such person intends to become a licensed jockey, possesses the physical ability and has demonstrated sufficient horsemanship to ride in a race without jeopardizing the safety of horses or other riders in the race.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148, R.S. 4:150 and R.S. 4:169.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, amended by the Department of Commerce, Racing Commission, LR 2:430 (December 1976), LR 3:26 (January 1977), repromulgated LR 4:275 (August 1978), amended by the Department of Economic Development, Racing Commission, LR 23:950 (August 1997).

##### §703. Applicant for a License

A. In addition to rules applicable to permittees, an applicant for a license as a jockey or apprentice jockey:

1. must have served at least one year with racing stables;

2. must provide an annual medical affidavit certifying such person is physically and mentally capable of performing the activities and duties of a licensed jockey or exercise person.

B. The stewards may require that any jockey or exercise person provide blood or urine samples for analysis after consultation with the track physician. Should a jockey or exercise person fail to comply with this requirement this person shall be suspended and referred to the commission to show cause for refusing to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148, R.S. 4:150, R.S. 4:151 and R.S. 4:169.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 2:430 (December 1976), LR 3:27 (January 1977), repromulgated LR 4:275 (August 1978), amended LR 10:593 (August 1984), amended by the Department of Economic Development, Racing Commission, LR 23:950 (August 1997).

Paul D. Burgess  
Executive Director

9708#020

**RULE**

**Department of Economic Development  
Racing Commission**

**Racing a Horse Under  
Investigation (LAC 35:I.1733)**

The Racing Commission amends LAC 35:I.1733, "Racing a Horse Under Investigation," to prevent a horse under investigation from running until after the stewards hearing is held.

**Title 35**

**HORSE RACING**

**Part I. General Provisions**

**Chapter 17. Corrupt and Prohibited Practices**

**§1733. Racing a Horse Under Investigation**

A. When a report as described in §1729 is received from the state chemist, the state steward shall immediately advise the trainer of his rights to have the "split" portion of the sample tested at his expense. The stable shall remain in good standing pending a ruling by the stewards, which shall not be made until the split portion of the original sample is confirmed positive by a laboratory chosen by the trainer from a list of referee laboratories. The horsemen's bookkeeper shall not release any purse monies until the results of the split portion of the sample are received by the commission. The horse allegedly to have been administered any such drug or substance shall not be allowed to enter in a race during the investigation and hearing.

B. - C. ...

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

**HISTORICAL NOTE:** Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), repromulgated LR 4:287 (August 1978), amended LR 7:262 (May 1981), LR 9:755 (November 1983), amended by the Department of Economic Development, Racing Commission, LR 18:367 (April 1992), LR 23:951 (August 1997).

Paul D. Burgess  
Executive Director

9708#019

**RULE**

**Board of Elementary and Secondary Education**

**Bulletin 1929—Accounting and  
Uniform Governmental Handbook**

In accordance with R.S. 49:950 et seq., the Board of Elementary and Secondary Education revised Bulletin 1929,

Louisiana Accounting and Uniform Governmental Handbook for Local and State School Boards, revised 1996. The handbook is referenced in the *Louisiana Administrative Code*, Title 28. The only revisions to Bulletin 1929 are program title (heading) changes as follows:

- 4533 IASA
- 4540 Improving America's Schools Act
- 4541 Title I
- 4542 Title I, Part C - Migrant
- 4543 Title VI
- 4544 Title IV
- 4546 Other IASA Programs
- 113 Therapists/Specialists/Counselors
- 1510 Improving America's Schools Act (IASA)
- 1520 Bilingual (Title VII)
- 2211 Regular Education
- 2212 Special Education Programs

**Title 28**

**EDUCATION**

**Part I. Board of Elementary and Secondary Education**

**Chapter 9. Bulletins, Regulations, and State Plans**

**§912. Accounting and Reporting Procedures**

**Bulletin 1929**

1. Bulletin 1929, Revised Louisiana Accounting and Governmental Handbook for Local School Boards, revised 1996 is adopted.

2. The primary purpose of the Louisiana Accounting and Uniform Governmental Handbook for Local School Boards is to serve as a vehicle for program cost accounting at the local and state levels. This handbook attempts to produce comprehensive and compatible sets of standardized terminology for use in education management for financial reporting.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:7 and 17:92.

**HISTORICAL NOTE:** Promulgated by the Board of Elementary and Secondary Education, LR 20:1097 (October 1994), amended LR 23:951 (August 1997).

Bulletin 1929 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 Finance and Management in the State Department of Education, or in the Office of the Board of Elementary and Secondary Education located in the Education Building in Baton Rouge, LA.

Weegie Peabody  
Executive Director

9708#068

**RULE**

**Department of Environmental Quality  
Office of Waste Services  
Hazardous Waste Division**

**Marathon Oil Delisting Petition  
(LAC 33:V.105 and Chapter 49.Appendix E)  
(HW057S)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste Division regulations, LAC 33:V.105.M and Chapter 49.Appendix E (HW057S).

Marathon Oil petitioned to exclude from the hazardous waste regulations (delist) the residual solids resulting from thermal desorption recycling of process solids generated at Marathon's refinery in Garyville, Louisiana. The department is required by the Administrative Procedure Act and the Louisiana hazardous waste regulations to process petitions for delisting by formal rulemaking.

This rule contains substantive changes to proposed rule HW057, to grant Marathon Oil's petition, specifically in LAC 33:V.Chapter 49.Appendix E.Table E1. The substantive changes affect the reference of constituents of concern for EPA hazardous waste numbers K048-K051, F037, and F038 identified in the first Paragraph of LAC 33:V.Chapter 49.Appendix E.Table E1 and the proposed delisting levels listed in conditions (3)(A) and (3)(B). Changes are also made to complete the listing of Marathon's optional testing requirements in conditions (4) and (4)(A) of the exclusion conditions.

As of July 1, 1997, the department officially changed the name of the Office of Solid and Hazardous Waste to the Office of Waste Services. This name change is being made at this time in the text of this rule in LAC 33:V.Chapter 49.Appendix E.Table E1.Condition (5).

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33**

**ENVIRONMENTAL QUALITY**

**Part V. Hazardous Waste and Hazardous Materials**

**Subpart 1. Department of Environmental  
Quality—Hazardous Waste**

**Chapter 1. General Provisions and Definitions**

**§105. Program Scope**

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility of TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including "solid waste" and "hazardous waste," appear in LAC

33:V.109. Those wastes which are excluded from regulation are found in this Section.

\* \* \*

[See Prior Text in A-M.1]

a. the petitioner must demonstrate to the satisfaction of the administrative authority that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an acutely hazardous waste;

b. based on a complete application, the administrative authority must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of LAC 33:V.4903; and

c. facilities that have successfully petitioned are listed in LAC 33:V.Chapter 49.Appendix E.

\* \* \*

[See Prior Text in M.2-M.10]

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 30:2180 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997).

**Chapter 49. Lists of Hazardous Wastes**

**Appendix E. Wastes Excluded Under LAC 33:V.105.M**

Table E1 - Wastes Excluded	
Facility	Address
Marathon Oil Co.	Garyville, LA
Waste Description	
Residual solids generated from the thermal desorption treatment of the following wastes: EPA Hazardous Waste Number K048, dissolved air flotation (DAF) float; K049, slop oil emulsion solids; K050, heat exchanger bundle cleaning sludge; K051, American Petroleum Institute (API) separator sludge; F037, primary oil/water/solids separation sludge; and F038, secondary emulsified oil/water/solids separation sludge. The constituents of concern for K048-K051 wastes are listed as hexavalent chromium and lead (see LAC 33:V. 4901). The constituents of concern for F037 and F038 wastes are listed as hexavalent chromium, lead, benzene, benzo(a)prylene, and chrysene (see LAC 33:V.4901). Marathon must implement a testing program that meets the following conditions for the exclusion to be valid:	

**(1) - Testing:**

Sample collection and analyzes, including quality control (QC) procedures, must be performed according to methodologies described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication Number SW-846, as incorporated by reference in LAC 33:V.110. If the department judges the desorption process to be effective under the operating conditions used during the initial verification testing, Marathon may replace the testing required in condition (1)(A) with the testing required in condition (1)(B). Marathon must continue to test as specified in condition (1)(A) until and unless notified by the department in writing that testing in condition (1)(A) may be replaced by condition (1)(B), or that testing requirements may be reduced or terminated as described in conditions (1)(C) and (1)(D) to the extent directed by the department.

**(1)(A) - Initial Verification Testing:**

During at least the first four weekly operating periods of full-scale operation of the thermal desorption unit, Marathon must monitor the operating conditions of the thermal desorption unit to maintain a minimum residual solids temperature throughout the high temperature unit of 870°F. The residual solids must be analyzed as weekly composites. The weekly composites must be composed of a minimum of two representative grab samples from each operating day during each weekly period of operation. The samples must be analyzed for the constituents listed in condition (3) prior to disposal of the residual solids. Marathon must report the operational and analytical test data, including quality control information, obtained during this initial period, no later than 90 days after initiating full-scale processing.

**(1)(B) - Subsequent Verification Testing:**

Following notification of approval by the department, Marathon may substitute the following testing conditions for those in condition (1)(A). Marathon must continue to monitor operating conditions and analyze samples representative of each month of operation. The samples must be composed of eight representative samples from randomly chosen operating days during the four-week period of operation of each month. These monthly representative composite samples must be analyzed for the constituents listed in condition (3) prior to the disposal of the residual solids. Marathon may, at its discretion, analyze composite samples gathered more frequently to demonstrate that smaller batches of waste are nonhazardous.

**(1)(C) - Termination of Monthly Organic Testing:**

Marathon must continue to monitor unit operating conditions and perform testing as required under condition (1)(B), for the constituents listed in condition (3)(B), until the analyzes submitted under condition (1)(B) show a minimum of three consecutive monthly representative samples with levels of constituents significantly below delisting levels listed in condition (3)(B). Following notification of approval by the department, Marathon may terminate monthly testing for the organic constituents found in condition (3)(B). Following termination of monthly testing for organic constituents, Marathon must test a representative composite sample, composited over a one-week time period, for all constituents listed in condition (3)(B) on a quarterly basis. If delisting levels for any organic constituents listed in condition (3)(B) are exceeded in the quarterly sample, Marathon must re-institute testing as required in condition (1)(B).

**(1)(D) - Termination of Monthly Inorganic Testing:**

Marathon must continue to monitor unit operating conditions and perform testing as required under condition (1)(B), for the constituents listed in condition (3)(A), until the analyzes submitted under condition (1)(B) show a minimum of three consecutive monthly representative samples with levels of constituents significantly below delisting levels listed in condition (3)(A). Following notification of approval by the department, Marathon may terminate monthly testing for the inorganic constituents found in condition (3)(A). Following termination of monthly testing for inorganic constituents, Marathon must test a representative composite sample, composited over a one-week time period, for all constituents listed in condition (3)(A) on a quarterly basis. If delisting levels for any inorganic constituents listed in condition (3)(A) are exceeded in the quarterly sample, Marathon must re-institute testing as required in condition (1)(B).

**(2) - Waste Holding and Handling:**

Marathon must store as hazardous wastes all residual solids generated until each batch has completed verification testing, as specified in conditions (1)(A) - (1)(D), and has satisfied the delisting criteria, as specified in condition (3). If the levels of constituents in the samples of residual solids are below all of the applicable levels set forth in condition (3), then the residual solids thereby become nonhazardous solid wastes and may be managed and disposed of in accordance with all applicable solid waste regulations. If constituent levels in any weekly composite or other representative sample equal or exceed any of the delisting levels set in condition (3), the residual solids generated during the corresponding period must be retreated to meet the delisting levels or managed and disposed of in accordance with subtitle C of RCRA.

**(3) - Delisting Levels:**

The following delisting levels have been determined safe by taking into account health-based criteria and limits of detection. Concentrations in conditions (3)(A) and (3)(B) must be measured in the extract from the samples by the method specified in LAC 33:V.4903.E. Concentrations in the extract must be less than the following levels (all units are milligrams per liter):

**(3)(A) - Inorganic Constituents:**

Antimony - 0.22; Arsenic - 0.40; Barium - 72; Beryllium - 0.14; Cadmium - 0.18; Chromium - 3.6; Lead - 0.54; Mercury - 0.072; Nickel - 3.6; Selenium - 1.8; Silver - 7.2; Vanadium - 7.2.

**(3)(B) - Organic Constituents:**

Acenaphthene - 72; Benzene - 0.18; Benzo(a)anthracene - 0.050; Benzo(a)pyrene - 0.050; Benzo(b)fluoranthrene - 0.050; Bis(2-ethylhexyl)phthalate - 0.22; Chrysene - 0.05; Ethylbenzene - 25; Fluoranthrene - 72; Fluorene - 72; Napthalene - 36; Pyrene - 72; Toluene - 36.

**(4) - Changes in Operating Conditions:**

After completing the initial verification test period in condition (1)(A), if Marathon significantly changes the operating conditions specified in the petition, Marathon must notify the department in writing. Following receipt of written approval by the department, Marathon must re-institute the testing required in condition (1)(A) for a minimum of four weekly operating periods. Marathon must report unit operating conditions and test data required by condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Marathon may replace testing condition (1)(A) with (1)(B), or reduce or terminate testing requirements as described in conditions (1)(C) and (1)(D) to the extent directed by the department. Marathon must fulfill all other requirements in condition (1).

**(4)(A) - Processing Equipment:**

Marathon may elect to change thermal desorption processing equipment based on operational performance and economic considerations. In the event that Marathon changes operating equipment, i.e., generic thermal desorption units, Marathon must re-institute processing and initiate testing required in condition (1)(A) for a minimum of four weekly operating periods. Marathon must report unit operating conditions and test data required in condition (1)(A), including quality control data, obtained during this period no later than 60 days after the changes take place. Following written notification by the department, Marathon may replace testing condition (1)(A) with (1)(B), or reduce or terminate testing requirements as described in conditions (1)(C) and (1)(D) to the extent directed by the department. Marathon must fulfill all other requirements in condition (1).

**(4)(B) - Batch Processing:**

Marathon may periodically elect to change operating conditions to accommodate batch processing of single-event waste generations. In the event that Marathon initiates batch processing and changes the operating conditions established under condition (1), Marathon must re-institute the testing required in condition (1)(A) during such batch processing events and monitor unit operating conditions and perform testing required by condition (1)(A), as appropriate. Following the completion of batch processing operations, Marathon must return to the operating conditions applicable prior to initiation of the batch processing and may return to the testing conditions that were applicable prior to the initiation of the batch processing activities.

(5) - Data Submittal:

Marathon must notify the department in writing at least two weeks prior to initiating condition (1)(A). The data obtained during condition (1)(A) must be submitted to the Assistant Secretary of the Office of Waste Services, LDEQ, 7290 Bluebonnet Road, Baton Rouge, LA 70810, within the specified 90 days. Records of operating conditions and analytical data from condition (1) must be compiled, summarized, and maintained on-site for a minimum of five years. These records and data must be furnished upon request by the department and made available for inspection. Failure to submit the required data within the specified time period or failure to maintain the required records on-site for the specified time will be considered by the department, at its discretion, sufficient basis to revoke the exclusion. All data must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the data submitted:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

In the event that any of this information is determined by the department, in its sole discretion, to be false, inaccurate, or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had been in effect."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997).

H. M. Strong  
Assistant Secretary

9708#066

**RULE**

**Department of Environmental Quality  
Office of Waste Services  
Solid Waste Division**

**Financial Assurance for Local Governments  
(LAC 33:VII.315 and 727)(SW024)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Solid Waste Division regulations, LAC 33:VII.315 and 727 (SW024).

The existing regulations specify several mechanisms by which owners and operators of municipal solid waste landfills may provide financial assurance for closure and post-closure of these facilities. These regulations increase the flexibility available to local governments to make the required demonstration of financial assurance. This action is necessary to make the state regulations consistent with the federal Subtitle D regulations.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3), therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33  
ENVIRONMENTAL QUALITY  
Part VII. Solid Waste  
Subpart 1. Solid Waste**

**Chapter 3. Scope and Mandatory Provisions of the Program**

**§315. Mandatory Provisions**

All persons conducting activities regulated under these regulations shall comply with the following provisions:

\*\*\*

[See Prior Text in A-G.3.b]

4. Financial Assurance. Existing Types I, II, or III facilities that are owned or operated by local governments must comply with the financial assurance requirements in LAC 33:VII.727 no later than April 9, 1997. The administrative authority may waive the requirements of this Section for up to one year until April 9, 1998, for good cause if an owner or operator demonstrates that the April 9, 1997, effective date for the requirements of this Section does not provide sufficient time to comply with these requirements and that such a waiver will not adversely affect human health and the environment. All other facilities must comply by February 20, 1995.

\*\*\*

[See Prior Text in G.5-R.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997).

**Chapter 7. Solid Waste Standards**

**Subchapter E. Financial Assurance for All Processors and Disposers of Solid Waste**

**§727. Financial Assurance**

\*\*\*

[See Prior Text in A-A.2.i.ix.(l)]

**SOLID WASTE FACILITY CORPORATE GUARANTEE FOR LIABILITY COVERAGE CLOSURE, AND/OR POST-CLOSURE CARE**

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the state of [insert name of state], hereinafter referred to as guarantor, to the Louisiana Department of Environmental Quality, obligee, on behalf of our subsidiary [insert the name of the permit holder or applicant] of [business address].

Recitals

\*\*\*

[See Prior Text in 1-12]

I hereby certify that the wording of this guarantee is identical to the wording specified in LAC 3:VII.727.A.2.i.ix.(l), effective on the date first above written.

Effective date: \_\_\_\_\_

[Name of Guarantor]

[Authorized signature for guarantor]

[Typed name and title of person signing]

Thus sworn and signed before me this [date].

j. Local Government Financial Test. An owner or operator that satisfies the requirements of Subsection A.2.j.i-iii of this Section may demonstrate financial assurance up to the amount specified in Subsection A.2.j.iv of this Section.

i. Financial Component

(a). The owner or operator must satisfy the following conditions, as applicable:

(i). if the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, it must have a current rating of Aaa, Aa, A, or Baa, as issued by *Moody's*, or AAA, AA, A, or BBB, as issued by *Standard and Poor's*, on all such general obligation bonds; or

(ii). the owner or operator must satisfy the ratio of cash plus marketable securities to total expenditures being greater than or equal to 0.05 and the ratio of annual debt service to total expenditures less than or equal to 0.20 based on the owner or operator's most recent audited annual financial statement.

(b). The owner or operator must prepare its financial statements in conformity with *Generally Accepted Accounting Principles* for governments and have its financial statements audited by an independent certified public accountant (or appropriate state agency).

(c). A local government is not eligible to assure its obligations under Subsection A.2.j of this Section if it:

(i). is currently in default on any outstanding general obligation bonds;

(ii). has any outstanding general obligation bonds rated lower than Baa as issued by *Moody's* or BBB as issued by *Standard and Poor's*;

(iii). operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

(iv). receives an adverse opinion, disclaimer of opinion, or other qualified opinion from the independent certified public accountant (or appropriate state agency) auditing its financial statement as required under Subsection A.2.j.i.(b) of this Section. The administrative authority may evaluate qualified opinions on a case-by-case basis and allow use of the financial test in cases where the administrative authority deems the qualification insufficient to warrant disallowance of use of the test.

(d). The following terms used in this Subsection are defined as follows:

(i). *Deficit*—total annual revenues minus total annual expenditures.

(ii). *Total Revenues*—revenues from all taxes and fees, but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party.

(iii). *Total Expenditures*—all expenditures, excluding capital outlays and debt repayment.

(iv). *Cash Plus Marketable Securities*—all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

(v). *Debt Service*—the amount of principal and interest due on a loan in a given time period, typically the current year.

ii. Public Notice Component. The local government owner or operator must place a reference to the closure and post-closure care costs assured through the financial test into its next comprehensive annual financial report (CAFR) after the effective date of this Section or prior to the initial receipt of waste at the facility, whichever is later. Disclosure must include the nature and source of closure and post-closure care requirements, the reported liability at the balance sheet date, the estimated total closure and post-closure care cost remaining to be recognized, the percentage of landfill capacity used to date, and the estimated landfill life in years. A reference to corrective action costs must be placed in the CAFR not later than 120 days after the corrective action remedy has been selected in accordance with the requirements of LAC 33:VII.709.E.6. For the first year the financial test is used to assure costs at a particular facility, the reference may be placed in the operating record until issuance of the next available CAFR if timing does not permit the reference to be incorporated into the most recently issued CAFR or budget. For closure and post-closure costs, conformance with *Government Accounting Standards Board Statement 18* assures compliance with this public notice component.

iii. Recordkeeping and Reporting Requirements

(a). The local government owner or operator must place the following items in the facility's operating record:

(i). a letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in Subsection A.2.j.iv of this Section. It must provide evidence that the local government meets the conditions of Subsection A.2.j.i.(a), (b), and (c) of this Section, and certify that the local government meets the conditions of Subsection A.2.j.i.(a), (b), (c), ii, and iv of this Section;

(ii). the local government's independently audited year-end financial statements for the latest fiscal year (except for local governments where audits are required every two years and unaudited statements may be used in years when audits are not required), including the unqualified opinion of the auditor who must be an independent certified public accountant or an appropriate state agency that conducts equivalent comprehensive audits;

(iii). a report to the local government from the local government's independent certified public accountant or the appropriate state agency based on performing an agreed upon procedures engagement relative to the financial ratios required by Subsection A.2.j.i.(a)(ii) of this Section, if applicable, and the requirements of Subsection A.2.j.i.(b) and (c).(iii) and (iv) of this Section. The certified public accountant or state agency's report should state the procedures performed and the certified public accountant or state agency's findings; and

(iv). a copy of the comprehensive annual financial report (CAFR) used to comply with Subsection A.2.j.ii of this Section (certification that the requirements of *General Accounting Standards Board Statement 18* have been met).

(b). The items required in Subsection A.2.j.iii.(a) of this Section must be placed in the facility operating record as follows:

(i). in the case of closure and post-closure care, either before the effective date of this Section, which is April 9, 1997, or prior to the initial receipt of waste at the facility, whichever is later; or

(ii). in the case of corrective action, not later than 120 days after the corrective action remedy is selected in accordance with the requirements of LAC 33:VII.709.E.6.

(c). After the initial placement of the items in the facility's operating record, the local government owner or operator must update the information and place the updated information in the operating record within 180 days following the close of the owner or operator's fiscal year.

(d). The local government owner or operator is no longer required to meet the requirements of Subsection A.2.j.iii of this Section when:

(i). the owner or operator substitutes alternate financial assurance, as specified in this Section; or

(ii). the owner or operator is released from the requirements of this Section in accordance with Subsection A.1 or 2 of this Section.

(e). A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, it must, within 210 days following the close of the owner or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this Section, place the required submissions for that assurance in the operating record, and notify the administrative authority that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(f). The administrative authority, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial condition from the local government at any time. If the administrative authority finds, on the basis of such reports or other information, that the owner or operator no longer meets the local government financial test, the local government must provide alternate financial assurance in accordance with this Section.

iv. Calculation of Costs to be Assured. The portion of the closure, post-closure, and corrective action costs for which an owner or operator can assure under Subsection A.2.j of this Section is determined as follows:

(a). if the local government owner or operator does not assure other environmental obligations through a financial test, it may assure closure, post-closure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue;

(b). if the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR 144.62, petroleum underground storage tank facilities under 40 CFR part 280, PCB storage facilities under 40 CFR part 761, and hazardous waste treatment, storage, and disposal facilities

under 40 CFR parts 264 and 265, or corresponding state programs, it must add those costs to the closure, post-closure, and corrective action costs it seeks to assure under Subsection A.2.j of this Section. The total that may be assured must not exceed 43 percent of the local government's total annual revenue;

(c). the owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in Subsection A.2.j.iv.(a) and (b) of this Section.

k. Local Government Guarantee. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsection A.1-2 of this Section, by obtaining a written guarantee provided by a local government. The guarantor must meet the requirements of the local government financial test in Subsection A.2.j of this Section, and must comply with the terms of a written guarantee.

i. Terms of the Written Guarantee. The guarantee must be effective before the initial receipt of waste or before the effective date of this Section, whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of LAC 33:VII.709.E.6. The guarantee must provide that:

(a). if the owner or operator fails to perform closure, post-closure care, and/or corrective action of a facility covered by the guarantee, the guarantor will:

(i). perform, or pay a third party to perform closure, post-closure care, and/or corrective action as required; or

(ii). establish a fully funded trust fund as specified in Subsection A.2.d of this Section in the name of the owner or operator;

(b). the guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the administrative authority. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the administrative authority, as evidenced by the return receipts; and

(c). if a guarantee is canceled, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the administrative authority, obtain alternate financial assurance, place evidence of that alternate financial assurance in the facility operating record, and notify the administrative authority. If the owner or operator fails to provide alternate financial assurance within the 90-day period, then the owner or operator must provide that alternate assurance within 120 days following the guarantor's notice of cancellation, place evidence of the alternate assurance in the facility operating record, and notify the administrative authority.

ii. Recordkeeping and Reporting

(a). The owner or operator must place a certified copy of the guarantee, along with the items required under Subsection A.2.j.iii of this Section, into the facility's operating record before the initial receipt of waste or before the effective date of this Section, whichever is later, in the case of closure or post-closure care, or no later than 120 days after the

corrective action remedy has been selected in accordance with the requirements of LAC 33:VII.709.E.6.

(b). The owner or operator is no longer required to maintain the items specified in Subsection A.2.k.ii of this Section when:

(i). the owner or operator substitutes alternate financial assurance as specified in this Section; or

(ii). the owner or operator is released from the requirements of this Section in accordance with Subsection A.1-2 of this Section.

(c). If a local government guarantor no longer meets the requirements of Subsection A.2.j of this Section, the owner or operator must, within 90 days, obtain alternate assurance, place evidence of the alternate assurance in the facility operating record, and notify the administrative authority. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate assurance within the next 30 days.

1. Use of Multiple Mechanisms. An owner or operator may demonstrate financial assurance for closure, post-closure, and corrective action, as required by Subsection A.1-2 of this Section, by establishing more than one financial mechanism per facility, except that mechanisms guaranteeing performance, rather than payment may not be combined with other instruments. The mechanisms must be as specified in Subsection A.2.d-i of this Section, except that financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care, and/or corrective action may be provided by a combination of mechanisms, rather than a single mechanism.

m. Discounting. The administrative authority may allow discounting of closure and post-closure cost estimates in Subsection A.2 of this Section, and/or corrective action costs in Subsection A.1 of this Section up to the rate of return for essentially risk-free investments, net of inflation, under the following conditions:

i. the administrative authority determines that cost estimates are complete and accurate and the owner or operator has submitted a statement from a registered professional engineer so stating;

ii. the state finds the facility in compliance with applicable and appropriate permit conditions;

iii. the administrative authority determines that the closure date is certain and the owner or operator certifies that there are no foreseeable factors that will change the estimate of site life; and

iv. discounted cost estimates must be adjusted annually to reflect inflation and years of remaining life.

[See Prior Text in B-B.2]

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

**HISTORICAL NOTE:** Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), LR 19:1316 (October 1993), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997).

H. M. Strong  
Assistant Secretary

## RULE

### Department of Environmental Quality Office of Water Resources Water Pollution Control Division

Louisiana Pollutant Discharge  
Elimination System (LPDES) Program  
(LAC 33:IX.2341, 2443, 2531, 2533,  
2709 and Appendix N)(WP024\*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Pollution Control Division regulations, (LAC 33:IX.2341, 2443, 2531, 2533, 2709, and Appendix N) (WP024\*).

This rule is identical to a federal law or regulation, 40 CFR part 136, 1996; 40 CFR chapter 1, subchapter N, parts 401-402, 404-471, 1996; 60 FR 40230, August 7, 1995 (parts 122 and 124); 60 FR 54764, October 25, 1995 (part 403 only); and 61 FR 15566, April 8, 1996 (part 403 only), which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division. No fiscal or economic impact will result from the rule. Therefore, the rule is promulgated in accordance with R.S. 49:953(F)(3) and (4). This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953 (G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

The rule establishes application procedures for phase II storm water discharges (point source discharges from commercial, retail, and institutional facilities and from municipal separate storm sewers systems serving populations less than 100,000). The dates for adoption by reference of 40 CFR part 136 and 40 CFR chapter 1, subchapter N, parts 401-402 and 404-471 are updated from 1994 to 1996. The rule also removes chromium in sewage sludge that is land applied from the list of regulated pollutants for which a removal credit may be available, and adds it to the list of unregulated pollutants that are eligible for a removal credit. Additionally, the rule includes new language and references to recent changes in land disposal restrictions as they apply to development of specific limits by POTWs and to local limits.

#### Title 33

### ENVIRONMENTAL QUALITY

#### Part IX. Water Quality

### Chapter 23. The Louisiana Pollutant Discharge

#### Elimination System (LPDES) Program

### Subchapter B. Permit Application and Special LPDES Program Requirements

#### §2341. Storm Water Discharges

##### A. Permit Requirement

1. Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain an LPDES permit except:

\* \* \*

[See Prior Text in A.1.a - A.8]

9. On and after October 1, 1994, dischargers composed entirely of storm water, that are not otherwise already required by Subsection A.1 of this Section to obtain a permit, shall be required to apply for and obtain a permit according to the application requirements in Subsection G of this Section. The state administrative authority may not require a permit for discharges of storm water as provided in Subsection A.2 of this Section or agricultural storm water runoff which is exempted from the definition of point source at LAC 33:IX.2313 and 2315.

\* \* \*

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

E. Application Deadlines Under Subsection A.1 of this Section

\* \* \*

[See Prior Text in E.1-1.a]

b. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, power plant, or uncontrolled sanitary landfill, permit application requirements are contained in Subsection G of this Section.

\* \* \*

[See Prior Text in E.2 - F.5]

G. Application Requirements for Discharges Composed Entirely of Storm Water Under Clean Water Act Section 402(p)(6). Any operator of a point source required to obtain a permit under Subsection A.9 of this Section shall submit an application in accordance with the following requirements.

1. Application Deadlines. The operator shall submit an application in accordance with the following deadlines:

a. a discharger which the state administrative authority determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the state shall apply for a permit to the state administrative authority within 180 days of receipt of notice, unless permission for a later date is granted by the state administrative authority (see LAC 33:IX.2443.C); or

b. all other dischargers shall apply to the state administrative authority no later than August 7, 2001.

2. Application Requirements. The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the state administrative authority:

a. individual application for nonmunicipal discharges (the requirements contained in Subsection C.1 of this Section);

b. application requirements for municipal separate storm sewer discharges (the requirements contained in Subsection D of this Section);

c. notice of intent to be covered by a general permit issued by the state administrative authority (the requirements contained in LAC 33:IX.2345.B.2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:957 (August 1997).

## §2443. Permits Required on a Case-by-Case Basis

\* \* \*

[See Prior Text in A - B]

C. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this Section (see LAC 33:IX.2341.A.1.e, C.1.e, and G.1.a), the state administrative authority may require the discharger to submit a permit application or other information regarding the discharge under Section 308 of the CWA. In requiring such information, the state administrative authority shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under LAC 33:IX.2341.A.1.e and C.1.e within 60 days of notice or under LAC 33:IX.2341.G.1.a within 180 days of notice, unless permission for a later date is granted by the state administrative authority. The question whether the initial designation was proper will remain open for consideration during the public comment period under LAC 33:IX.2417 and in any subsequent hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997).

### Subchapter N. Adoption by Reference

The Louisiana Department of Environmental Quality adopts by reference the following federal requirements.

#### §2531. 40 CFR Part 136

Title 40 (Protection of the Environment) *Code of Federal Regulations* (CFR) part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, revised July 1, 1996, in its entirety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997).

#### §2533. 40 CFR Subchapter N

Title 40 (Protection of the Environment) CFR, chapter 1, subchapter N (Effluent Guidelines and Standards), revised July 1, 1996, parts 401 and 402, and parts 404 - 471 in their entirety.

(Note: General Pretreatment Regulations for Existing and New Sources of Pollution found in part 403 of subchapter N have been included in these regulations as Subchapter T.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997).

### Subchapter T. General Pretreatment Regulations for Existing and New Sources of Pollution

#### §2709. National Pretreatment Standards: Prohibited Discharges

\* \* \*

[See Prior Text in A - B.8]

C. Development of Specific Limits by POTW

1. Each POTW developing a POTW pretreatment program pursuant to LAC 33:IX.2715 shall develop and enforce specific limits to implement the prohibitions listed in Subsections A.1 and B of this Section. Each POTW with an approved pretreatment program shall continue to develop

these limits as necessary and effectively enforce such limits. In addition, the POTW may establish such limits as necessary to address the land disposal restrictions at 40 CFR 268.40 (40 CFR, July 1, 1996, as amended in 61 FR 36419, July 9, 1996, and 61 FR 43927, August 26, 1996).

\*\*\*

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

D. Local Limits. Where specific prohibitions or limits on pollutants or pollutant parameters are developed by a POTW in accordance with Subsection C of this Section, including those standards established to address land disposal restrictions at 40 CFR 268.40 (40 CFR, July 1, 1996, as amended in 61 FR 36419, July 9, 1996, and 61 FR 43927, August 26, 1996), such limits shall be deemed pretreatment standards for the purposes of Section 307(d) of the Act.

\*\*\*

[See Prior Text in E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997).

**Appendix N**

**Pollutants Eligible for a Removal Credit**

**I. Regulated Pollutants in 40 CFR Part 503 Eligible for a Removal Credit**

Pollutants	Use or Disposal Practice		
	LA	SD	I
Arsenic	X	X	X
Beryllium			X
Cadmium	X		X
Chromium		X	X
Copper	X		
Lead	X		X
Mercury	X		X
Molybdenum	X		
Nickel	X	X	X
Selenium	X		
Zinc	X		
Total hydrocarbons			X <sup>1</sup>

Key:

LA = land application

SD = surface disposal site without a liner and leachate collection system

I = firing of sewage sludge in a sewage sludge incinerator

<sup>1</sup> = The following organic pollutants are eligible for a removal credit if the requirements for total hydrocarbons in subpart E in 40 CFR part 503 are met when sewage sludge is fired in a sewage sludge incinerator: Acrylonitrile, Aldrin/Dieldrin (total), Benzene, Benzidine, Benzo(a)pyrene, Bis(2-chloroethyl)ether, Bis(2-ethylhexyl)phthalate, Bromodichloromethane, Bromoethane, Bromoform, Carbon

tetrachloride, Chlordane, Chloroform, Chloromethane, DDD, DDE, DDT, Dibromochloromethane, Dibutyl phthalate, 1,2-dichloroethane, 1,1-dichloroethylene, 2,4-dichlorophenol, 1,3-dichloropropene, Diethyl phthalate, 2,4-dinitrophenol, 1,2-diphenylhydrazine, Di-n-butyl phthalate, Endosulfan, Endrin, Ethylbenzene, Heptachlor, Heptachlor epoxide, Hexachlorobutadiene, Alpha-hexachlorocyclohexane, Beta-hexachlorocyclohexane, Hexachlorocyclopentadiene, Hexachloroethane, Hydrogen cyanide, Isophorone, Lindane, Methylene chloride, Nitrobenzene, N-Nitrosodimethylamine, N-Nitrosodi-n-propylamine, Pentachlorophenol, Phenol, Polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzo-p-dioxin, 1,1,2,2-tetrachloroethane, Tetrachloroethylene, Toluene, Toxaphene, Trichloroethylene, 1,2,4-Trichlorobenzene, 1,1,1-Trichloroethane, 1,1,2-Trichloroethane, and 2,4,6-Trichlorophenol.

**II. Additional Pollutants Eligible for a Removal Credit (milligrams per kilogram—dry weight basis)**

Pollutant	Use or Disposal Practice			
	LA	SD		I
		Un-lined <sup>1</sup>	Lined <sup>2</sup>	
Arsenic			<sup>3</sup> 100	
Aldrin/Dieldrin (Total)	2.7			
Benzene	<sup>3</sup> 16	140	3400	
Benzo(a)pyrene	15	<sup>3</sup> 100	<sup>3</sup> 100	
Bis(2-ethylhexyl)phthalate		<sup>3</sup> 100	100	
Cadmium		<sup>3</sup> 100	<sup>3</sup> 100	
Chlordane	86	<sup>3</sup> 100	<sup>3</sup> 100	
Chromium	4		<sup>3</sup> 100	
Copper		<sup>3</sup> 46	<sup>3</sup> 100	1400
DDD, DDE, DDT (Total)	1.2	2000	2000	
2,4 Dichlorophenoxy-acetic acid		7	7	
Fluoride	730			
Heptachlor	7.4			
Hexachlorobenzene	29			
Hexachlorobutadiene	600			
Iron	<sup>3</sup> 78			
Lead		<sup>3</sup> 100	<sup>3</sup> 100	
Lindane	84	<sup>3</sup> 28	<sup>3</sup> 28	
Malathion		0.63	0.63	
Mercury		<sup>3</sup> 100	<sup>3</sup> 100	
Molybdenum		40	40	
Nickel			<sup>3</sup> 100	
N-Nitrosodimethylamine	2.1	0.088	0.088	

Pentachlorophenol	30			
Phenol		82	82	
Polychlorinated biphenyls	4.6	<50	<50	
Selenium		4.8	4.8	4.8
Toxaphene	10	<sup>3</sup> 26	<sup>3</sup> 26	
Trichloroethylene	<sup>3</sup> 10	9500	<sup>3</sup> 10	
Zinc		4500	4500	4500

**Key:**

LA = land application

SD = surface disposal

I = incineration.

<sup>1</sup> = Sewage sludge unit without a liner and leachate collection system.

<sup>2</sup> = Sewage sludge unit with a liner and leachate collection system.

<sup>3</sup> = Value expressed in grams per kilogram—dry weight basis.

<sup>4</sup> = Value to be determined on a case-by-case basis.

Linda Korn Levy  
Assistant Secretary

9708#031

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

**Licensure Eligibility and Educational  
Programs (LAC 46:XLVII.Chapters 33 and 35)**

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing, pursuant to the authority vested in the board by R.S. 37:918 and R.S. 37:919, has amended Title 46:XLVII pertaining to the licensure eligibility requirements of the board.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**Subchapter D. Registration and Licensure**

**§3349. Licensure by Examination**

\* \* \*

B. Requirements for eligibility to take the NCLEX-RN in Louisiana include:

1. evidence of good moral character;
2. successful completion of a nursing education program approved by the board, or successful completion of a nursing education program located in another country or approved by another board of nursing which program meets or exceeds the educational standards for nursing education programs in Louisiana;

3. recommendation by the director of the school of nursing;

4. completion of the application form to include criminal records check as directed by the executive director of the board;

5. remittance of the required fee;

6. freedom from violations of this Part or of LAC 46:XLVII.3354;

7. freedom from acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:921 and LAC 46:XLVII.3331; or if found guilty of committing such acts or omissions, the board finds, after investigation, that sufficient restitution, rehabilitation, and education have occurred; and

8. evidence of proficiency in the English language if a graduate of a nursing program offered in a foreign country. Graduates of foreign nursing schools (except Canadian schools) must produce evidence of successful completion of the Commission on Graduates of Foreign Nursing Schools (COGNFS) Examination.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:77 (March 1981), amended LR 11:348 (April 1985), LR 13:254 (June 1987), LR 13:394 (July 1987), LR 13:436 (August 1987), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1572 (December 1993), LR 21:574 (June 1995), LR 21:804 (August 1995), LR 23:960 (August 1997).

**§3351. Licensure by Endorsement**

Requirements for licensure by endorsement include:

1. evidence of good moral character;
2. evidence of initial licensure under the laws of another state, territory, or country;
3. evidence of a current licensure issued directly from the jurisdiction of last employment;
4. successful completion of a nursing education program approved by the board, or successful completion of a nursing education program located in another country or approved by another board of nursing which program meets or exceeds the educational standards for nursing education programs in Louisiana;
5. successful completion of a licensing examination which is comparable to that required for licensure by examination in Louisiana at the time of applicant's graduation;
6. freedom from violations of this Part or of LAC 46:XLVII.3354;
7. freedom from acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:921 and LAC 46:XLVII.3331; or if found guilty of committing such acts or omissions, the board finds, after investigation, that sufficient restitution, rehabilitation, and education have occurred;
8. remittance of the required fee;

9. completion of the required application for endorsement, including a criminal records check and the submission of required documents, within one year. School records submitted by the applicant or a third party will not be accepted; and

10. evidence of proficiency in the English language if a graduate of a nursing program offered in a foreign country.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:77 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1572 (December 1993), LR 21:804 (August 1995), LR 23:960 (August 1997).

### §3353. Temporary Permits

\* \* \*

B. A 90-day permit to practice as a registered nurse may be issued to any nurse currently registered in another state, territory, or country, pending receipt of endorsement credentials providing that said nurse has filed a complete application for licensure by endorsement and provided that:

\* \* \*

3. There is no evidence of violation of this Part or of LAC 46:XLVII.3354. If information relative to violations of this Part or of LAC 46:XLVII.3354, or an investigation of same, is received during the 90-day permit interval, the permit shall be recalled and licensure denied or delayed in accordance with LAC 46:XLVII.3354.

4. There is no allegation of acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:921 and LAC 46:XLVII.3331. If information relative to such acts or omissions, is received during the 90-day permit interval, the permit shall be recalled and licensure denied until such time as the person requests to appear before the board to show cause as to why licensure should not be denied.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:78 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1573 (December 1993), LR 23:961 (August 1997).

### §3354. Denial or Delay of Licensure, Reinstatement, or the Right to Practice Nursing as a Student Nurse

A. Denial of Licensure, Reinstatement, or the Right to Practice Nursing as a Student Nurse

1. Applicants for licensure, reinstatement, or the right to practice as a student nurse shall be denied approval for licensure, for reinstatement, to receive a temporary working permit, to be eligible for NCLEX-RN, or to enter or progress into any clinical nursing course, if the applicant:

a. knowingly falsifies any documents submitted to the board or the nursing school; or

b. has pled guilty, nolo contendere, been convicted of, or committed a:

i. "crime of violence" as defined in R.S. 14:2(13), or any of the following crimes: first degree feticide, second degree feticide, aggravated assault with a firearm, stalking, false imprisonment-offender armed with a dangerous weapon, incest, aggravated incest, molestation of a juvenile, sexual battery of the infirm; or

ii. crime which involves distribution of drugs. For purposes of this Section, a pardon, suspension of imposition of sentence, expungement, or pretrial diversion or similar

programs shall not negate or diminish the requirements of this Section.

2. Applicants who are denied licensure, reinstatement, or the right to practice nursing as a student nurse shall not be eligible to submit a new application, unless the grounds for denial are falsification of records and until the following conditions are met:

a. a minimum of five years has passed since the denial was issued;

b. the applicant presents evidence that the cause for the denial no longer exists; and

c. a hearing or conference is held before the board to review the evidence, to afford the applicant the opportunity to prove that the cause for the denial no longer exists, and to provide an opportunity for the board to evaluate changes in the person or conditions.

B. Delay of Licensure, Reinstatement, or the Right to Practice Nursing as a Student Nurse

1. Applicants for licensure, reinstatement, and for practice as a student nurse shall be delayed approval for licensure, for reinstatement, to receive a temporary working permit, to be eligible for NCLEX-RN, or to enter or progress into any clinical nursing course, if the applicant:

a. has any pending disciplinary action or any restrictions of any form by any licensing/certifying board in any state; or

b. has a pending criminal charge that involves any violence or danger to another person, or involves a crime which constitutes a threat to patient care; or

c. has pled guilty, nolo contendere, been convicted of or committed a crime that reflects on the ability of the person to practice nursing safely, and the conditions of the court have not been met, or is currently serving a court ordered probation or parole. If the crime is a "crime of violence" as defined in R.S. 14:2(13) or any of the following crimes: first degree feticide, second degree feticide, aggravated assault with a firearm, stalking, false imprisonment-offender armed with a dangerous weapon, incest, aggravated incest, molestation of a juvenile, sexual battery of the infirm, the applicant shall be denied.

For purposes of this Section, a pardon, suspension of imposition of sentence, expungement, or pretrial diversion or similar programs shall not negate or diminish the requirements of this Section.

2. Applicants who are delayed licensure, reinstatement, or the right to practice nursing as a student nurse shall not be eligible to submit a new application until the following conditions are met:

a. the applicant presents sufficient evidence that the cause for the delay no longer exists; and

b. a hearing or conference is held before the board to review the evidence, to afford the applicant the opportunity to prove that the cause for the delay no longer exists, and to provide an opportunity for the board to evaluate changes in the person or conditions.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 23:961 (August 1997).

**§3355. Renewal of License**

\*\*\*

C. An inactive or lapsed license may be reinstated by submitting a completed application, paying the required fee, and meeting all other relevant requirements, provided there is no evidence of violation of this Part or of LAC 46:XLVII.3354, or no allegations of acts or omissions which constitute grounds for disciplinary action as defined in R.S. 37:921 or LAC 46:XLVII.3331. Any person practicing as a registered nurse during the time one's license is inactive or has lapsed is considered an illegal practitioner and is subject to the penalties provided for violation of this Part and will not be reinstated until the disciplinary action is resolved.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:78 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 16:1061 (December 1990), LR 23:962 August (1997).

**Chapter 35. Nursing Educational Programs**

**§3517. Student Selection and Guidance**

\*\*\*

B. Qualified applicants shall be considered for admission without discrimination and in compliance with applicable state and federal laws and regulations.

\*\*\*

I. Students shall not be eligible to enroll in a clinical nursing course based on evidence of grounds for denial of licensure in accordance with R.S. 37:921, LAC 46:XLVII.3331 and LAC 46:XLVII.3354.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:187 (April 1977), amended LR 10:1025 (December 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1147 (September 1993), LR 23:962 (August 1997).

**§3536. Approval for Nursing Education Programs Whose Administrative Control is Located in Another State Offering Programs, Courses, and/or Clinical Experience in Louisiana**

\*\*\*

B. Course/Clinical Offerings. Out-of-state nursing programs offering courses/clinical experiences in Louisiana are expected to maintain the standards required of Louisiana-based programs. The board reserves the right to withdraw the approval of such offerings if adherence to these standards is not maintained. To receive approval by the Board of Nursing for course/clinical offerings in Louisiana by nursing programs whose administrative control is located in another state, the following criteria shall be met:

\*\*\*

**3. Students**

a. ...

b. Students shall not be eligible to enroll in a clinical nursing course based on evidence of grounds for denial of licensure in accordance with R.S. 37:921, LAC 46:XLVII.3331 and LAC 46:XLVII.3354.

\*\*\*

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1145 (September 1993), amended LR 23:962 (August 1997).

Barbara L. Morvant  
Executive Director

9708#035

**RULE**

**Department of Health and Hospitals  
Board of Nursing**

Officers of the Board; Registration and Licensure; and License Renewal (LAC 46:XLVII.3303, 3347 and 3355)

Notice is hereby given, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (board), pursuant to the authority vested in the board by R.S. 37:918 and R.S. 37:919, has amended LAC 46:XLVII pertaining to the renewal dates of the board.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part XLVII. Nurses**

**Subpart 2. Registered Nurses**

**Chapter 33. General**

**Subchapter A. Board of Nursing**

**§3303. Officers of the Board**

A. The officers of the board shall consist of a president and a vice president.

\*\*\*

D. The duties of the officers shall be as follows:

\*\*\*

2. The vice president shall prepare the annual budget, review financial records periodically and present a report at each regular meeting of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:914 and R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:73 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 23:962 (August 1997).

**Subchapter D. Registration and Licensure**

**§3347. Registration and Licensure**

\*\*\*

C. The board shall issue a certificate of registration, carrying a permanent registration number, designating the date of issuance, the authorization to practice as a registered nurse in Louisiana, and signed by the president and the vice president of the board, to all applicants who qualify for initial licensure.

D. The executive director, or a designee of the board, shall record the registration of the permanent records of the board and shall issue a license to practice, valid from the date of issuance until January 31. For individuals registered between January 1 and January 31, the board shall issue a license to practice, valid from the date of issuance until January 31 of the next year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:77 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 23:962 (August 1997).

**§3355. Renewal of License**

A. Every person holding a license to practice as a registered nurse, and intending to practice during the ensuing year, shall renew their license annually prior to the expiration of their license. The board shall mail an application for renewal of a license to every person who holds a current license. The licensee shall complete the renewal form and return to the board before January 1. Upon receipt of the application and the renewal fee as required under LAC 46:XLVII.3361, the board shall verify the accuracy of the application and issue to the licensee a license of renewal for the current year beginning February 1 and expiring January 31. Incomplete applications will be returned. Applications postmarked after December 31 will be considered late and subject to the fee as required under LAC 46:XLVII.3361 for late renewals. Failure to renew a license prior to expiration subjects the individual to forfeiture of the right to practice.

1. Change of Address. Notify the office of the board in writing within 30 days if a change of address has occurred.

\* \* \*

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

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:78 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 16:1061 (December 1990), amended LR 23:963 (August 1997).

Barbara L. Morvant  
Executive Director

9708#034

**RULE**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

**Certified Animal Euthanasia  
Technicians (LAC 46:LXXXV.1201)**

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.1201 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1558 et seq.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 12. Certified Animal Euthanasia Technicians**

**§1201. Applications for Certificates of Approval**

A. ...

B. In addition to the application form, the board may require that the applicant furnish all of the following:

1. - 3. ...

4. certified scores on any previous examinations in animal euthanasia and/or proof of successful completion of a board-approved course in animal euthanasia within a three-year period;

5. - 9. ...

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1424 (November 1993), amended LR 23:963 (August 1997).

Charles B. Mann  
Executive Director

9708#050

**RULE**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

**Fees (LAC 46:LXXXV.501 and 503)**

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.Chapter 5 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and the Veterinary Practice Act, R.S. 37:1518 et seq.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 5. Fees**

**§501. Fees**

The board hereby adopts and establishes the following fees:

**LICENSES**

Annual renewal-active license	\$125
Annual renewal-inactive license	\$ 75
Duplicate license	\$ 25
Original license fee	\$100
Temporary license	\$100
Exams:	
Clinical Competency Test (CCT)	\$190
National Board Examination (NBE)	\$215
State Board Examination	\$175

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 and 1520.A.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 6:71 (February 1980), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 18:380 (April 1992), LR 19:1326 (October 1993), LR 23:963 (August 1997).

**§503. Exemption of Fee**

A. The board may exempt a veterinarian licensed in the state of Louisiana from the annual license renewal fee if:

1. - 2. ...

3. Repeal.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 and 1520.A.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 10:208 (March 1984), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 23:963 (August 1997).

Charles B. Mann  
Executive Director

9708#045

**RULE**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

**Licensure Procedures  
(LAC 46:LXXXV.301-307)**

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.Chapter 3 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

**Title 46**

**PROFESSIONAL AND OCCUPATIONAL  
STANDARDS**

**Part LXXXV. Veterinarians**

**Chapter 3. Licensure Procedures**

**§301. Applications for Licensure**

A. ...

B. In addition to the above requirements, the board may also require that any applicant furnish the following information:

1. - 6. ...

7. three letters of recommendation from licensed veterinarians or other professionals, none of whom may be members of the applicant's family or currently enrolled in the same veterinary school curriculum as the applicant. Said references are to be furnished for the purpose of determining the applicant's professional capabilities and ethical standards;

8. prior to licensure in Louisiana, a foreign veterinary school graduate must provide a copy of the "Educational Commission for Foreign Veterinary Graduates" or "ECFVG" certificate to the board.

C. ...

D. The board may reject any applications which do not contain full and complete answers and/or information as requested, and may reject any application, or take action against the license of any licensee, if any of the information furnished in the application is fabricated, false, misleading or incorrect.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended LR 10:464 (June 1984), amended by the Department of Health and Hospitals, Board of Veterinary Medicine,

LR 16:224 (March 1990), LR 19:343 (March 1993), LR 23:964 (August 1997).

**§302. Renewals**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:343 (March 1993), repealed LR 23:964 (August 1997).

**§303. Examinations**

**A. Examinations Required for Licensure**

1. The board requires that all applicants for licensure to practice veterinary medicine in the state of Louisiana shall pass the national examination in addition to any and all state examinations (herein defined as such written examination, oral interviews and/or practical demonstrations as the board may request or require).

2. The Board of Veterinary Medicine shall annually adopt national examination(s) as the board deems appropriate. Said examinations are hereafter referred to as the "national examination(s)."

3. All applications, correspondence, and examinations shall be in the English language.

4. A candidate for examination must be:

- a. a graduate of an AVMA accredited school or college of veterinary medicine; or
- b. currently enrolled in the ECFVG program or certified by the ECFVG program; or
- c. currently enrolled in the fourth year of veterinary school.

**B. National Examinations**

1. All applicants for licensure must take and successfully pass the national examinations as a condition for licensure in Louisiana.

2. The board hereby adopts the passing scores on the national examinations set by the NBEC and adopted or endorsed by the AAVSB.

3. Scores shall be valid for a period of five years from the date of the examination administration.

4. The requirement for taking the national examinations may be waived when an applicant:

- a. holds a currently valid license in good standing in another state, district, or territory of the United States; and
- b. has been employed as a licensed veterinarian in a full-time private practice or its equivalent as determined by a majority vote of the board for the five years immediately preceding his application.

5. An applicant who cannot demonstrate eligibility for a waiver of the national examinations will be required to provide official copies of his scores to the board. Said scores shall be no more than five years old.

6. An applicant whose scores are greater than five years old and who cannot demonstrate eligibility for a waiver of the national examinations must satisfy one of the following options:

- a. applicant may retake and successfully pass the national examinations; or
- b. applicant may apply to the board for a determination of experience and education deemed to be equivalent to the requirements for eligibility of waiver of these examinations.

**C. State Examination**

1. A state board examination shall be required of all applicants for licensure in Louisiana. No person shall obtain any license to practice veterinary medicine without successfully passing the Louisiana state board examination. No waivers of the state board examination shall be granted.

2. The state board examination shall consist of no fewer than 25 questions taken from the veterinary practice act statutes and rules promulgated by the board. This test may also contain items taken from statutes and/or regulations promulgated by the other state and federal agencies deemed by the board to be pertinent to the practice of veterinary medicine.

3. Prior to taking the examination, applicants will be provided with copies of all rules, regulations, and statutes from which items on the RPC examination may be taken.

4. The state board examination may be prepared, administered and graded by the members of the Board of Veterinary Medicine or may be prepared, administered and/or graded, in whole or in part, by any person, firm, corporation or other entity selected, requested or designated to do so by the Board of Veterinary Medicine.

5. The state board examination shall be administered monthly or as often as is practicable and necessary. To be eligible to sit for the state board, an applicant shall demonstrate that he is a graduate of an accredited school of veterinary medicine or eligible for graduation within not less than 60 days of the date that the examination is administered.

6. Scores shall be valid for a period of five years from the date of the examination administration.

D. Any applicant who fails to take and/or pass all required examinations in a continuous five-year period shall be required to retake all examinations whose scores are greater than five years old, unless the applicant can demonstrate eligibility for a waiver as described in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:344 (March 1993), LR 19:1327 (October 1993), LR 23:964 (August 1997).

**§305. Renewals**

A. Pursuant to R.S. 37:1524 and 37:1525, all licenses must be renewed annually. Failure to renew a license shall be considered a violation of the rules of professional conduct. Licenses which are not renewed within 60 days of the deadline for renewal will be suspended or revoked by majority vote of the board at the next available board meeting.

B. Persons failing to renew their license by more than 60 days after the annual deadline will receive one notification via certified mail prior to a suspension of the license. Such notice will advise of actions to be taken by the board in conjunction with the failure to renew. These actions may include the imposition of a late fee and/or a fine for reinstatement of the license. The board may also elect to publish, in its own newsletter and/or publications of the LVMA, and distribute to

other parties, the names of such persons holding suspended or revoked licenses. The distribution of this list may include, but is not limited to, the Office of State Narcotics, the federal Drug Enforcement Administration, and Food and Drug Administration, drug supply wholesalers, veterinary supply wholesalers, Board of Pharmacy, and the LVMA.

C. It is the duty of the licensee to maintain a current address with the office of the Board of Veterinary Medicine and to notify the board's office if an annual re-registration form is not received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:343 (March 1993), amended LR 23:965 (August 1997).

**§307. Temporary Permits**

A. The board may issue temporary licenses when the following conditions are satisfied:

1. Applicant must make full application for licensure; such application is to include:

a. payment of fee to enroll in the next available state board examination; and

b. transfer of scores on the national examinations which meet or exceed the passing score for Louisiana for the specific examination date and payment of fee for those transfers, except where applicant meets the criteria for eligibility of waiver as found in §303.B; and

c. payment of fee for temporary licensure.

2. - 5. ...

B. - D. ...

E. No person who has failed the state board examination may receive a temporary license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:48 (January 1993), LR 23:965 (August 1997).

Charles B. Mann  
Executive Director

9708#044

**RULE**

**Department of Health and Hospitals  
Board of Veterinary Medicine**

**Operations of the Board  
(LAC 46:LXXXV.101-106)**

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.Chapter 1 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

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

**Part LXXXV. Veterinarians**

**Chapter 1. Operations of the Board of Veterinary Medicine**

**§101. Information, Agency Office, Request for Rules or Action**

A. Principal Office. The board shall maintain its principal office in Baton Rouge, Louisiana, where the records of the board shall be maintained for public inspection by any interested parties during regular office hours.

B. Requests for Copies of Public Records. Persons who wish to receive notices of meetings, copies of meeting minutes, copies of the notice of intent for a rule change, or any other public information from the board office must submit a written request. The board shall charge the fee set by the Division of Administration for providing copies and mailing documents so requested. Payment may be requested in advance of mailing or otherwise providing documents. Any person indebted to the board may be denied further services until such time as the indebtedness has been cleared. The board may provide copies free of charge to other governmental agencies or when the total charges are less than \$1.

C. Requests to Review Public Records. Persons who wish to obtain information concerning board activities or to review any public documents on file at the offices of the board, may do so at the principal office of the board during regular business hours. Notices of board meetings, proposed rules, and all other information concerning the activities, functions and actions of the board which are public records shall be available for public inspection at the principal office of the board during regular business hours.

D. Submitting Information to the Board. Persons who wish to request adoption, amendment or repeal of rules, who seek to institute disciplinary proceedings, or who have other business of whatever kind or character before the board may do so at the principal office of the board during regular business hours.

E. Filing a Complaint. Persons who wish to file a complaint against a licensee of the board or against other persons over whom the board has jurisdiction shall submit a written complaint which is signed and notarized. Complaints must be filed in accordance with all time limitations established by R.S. 37:21.

F. Reports to Licensees. The board shall provide a regular report, which shall include but not be limited to: notices of changes in policy, procedure, regulations, and/or statutes by the board or other governmental entities and dispositions of disciplinary cases. Other information deemed by the board to be pertinent in its mission of protecting the public health, safety, and welfare in the practice of veterinary medicine shall be printed and mailed to all licensees and other interested parties who have requested in writing to receive this report. The report shall be published not less than one time per fiscal year and may be published more frequently as the president of the board shall order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:66 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:1328 (October 1993), LR 23:966 (August 1997).

**§103. Meetings**

A. The annual meeting of the Board of Veterinary Medicine shall be held during the last quarter of the fiscal year in April, May or June of each year, at a time and place to be announced by posting public notice of the time and place of said meeting 24 hours in advance of such meeting at the principal office of the Board of Veterinary Medicine in Baton Rouge, Louisiana.

B. Additional meetings of the board may be called by the president or by any three members of the board and may be announced by posting notice of the date, time and place of such meeting at least 24 hours in advance thereof, at the principal office of the board located in Baton Rouge, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:65 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:222 (March 1990), LR 19:345 (March 1993), LR 20:1380 (December 1994), LR 23:966 (August 1997).

**§105. Appeals and Review**

A. Applicants for Licensure or Examination. Any applicant desiring to review his or her (hereinafter in this title, the masculine pronouns "he," "him," and "his" shall be deemed to include the feminine pronouns "she," "her," and "hers") national examination and/or the master answer sheet and/or the examination questions shall make arrangements with the national examination service vendor and/or any person, firm, corporation or entity charged by the Board of Veterinary Medicine with the preparation, grading and/or administration of the national examination(s). The Board of Veterinary Medicine shall not provide to applicants:

1. reviews of the questions contained on the national examination;
2. the answers to the questions contained on the national examination; or
3. any applicant's score on the national examination.

**B. Persons Aggrieved by a Decision of the Board**

1. Any person aggrieved by a decision of the board, other than a person against whom disciplinary proceedings have been brought pursuant to R.S. 37:1526 and/or 37:1531, may, within 30 days of notification of the board's action or decision, petition the board for a review of the board's actions.

2. Such petition shall be in the form of a letter, signed by the person aggrieved, and mailed to the board at its principal office.

3. Upon receipt of such petition, the board may then proceed to take such action as it deems expedient or hold such hearings as may be necessary, and may review such action as it deems expedient, and may review such testimony and/or documents and/or records as it deems necessary to dispose of the matter; but the board shall not, in any event, be required to conduct any hearings or investigations, or consider any

offerings, testimony or evidence unless so required by statute or other rules or regulations of the board.

C. Licensee Against Whom Disciplinary Proceedings Have Been Brought. Any person against whom disciplinary proceedings have been instituted and against whom disciplinary action has been taken by the board pursuant to R.S. 37:1526 and/or 37:1531, shall have rights of review and/or rehearing and/or appeal in accordance with the terms and provisions of the Administrative Procedure Act and §106.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 8:65 (February 1982), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:345 (March 1993), LR 23:966 (August 1997).

### **§106. Complaint Resolution and Disciplinary Procedures**

#### **A. Hearings and Informal Dispositions**

1. The board may call an administrative public hearing for the purpose of determining whether a respondent has violated any portion of the Veterinary Practice Act (R.S. 37:1511 et seq.) or rules pursuant to R.S. 37:1526. Notice of such hearing and subpoenas issued by the board pursuant to such hearing may be delivered by certified, return-receipt-requested mail or by hand-delivery.

2. As provided by the Administrative Procedure Act, R.S. 49:956, the respondent may waive his right to a public hearing and resolve any complaint case by means of informal disposition. The board will offer, via certified, return-receipt-requested mail, this option to a respondent against whom it has been determined that a valid complaint has been received and where, in the opinion of the board, a public hearing is not necessary to effectively and judiciously render a disciplinary action.

3. The respondent may be required to appear before the board, or a duly authorized committee appointed by the board, to discuss the charges and accept or decline disciplinary measures and fines which the committee recommends to the board. Such appearance may be required as part of an informal disposition and/or at an administrative public hearing.

#### **B. Appointing a Complaint Review Committee**

1. As provided by R.S. 37:1518, the board may appoint a committee of persons to conduct investigations for the purpose of discovering violations of the statutes and rules governing the practice of veterinary medicine. Any committee so appointed shall be chaired by a member of the board who will select two other practicing veterinarians to serve as committee members.

2. The functions of the complaint review committee shall be to review all complaints to determine whether or not the board has jurisdiction over the actions described in the complaint, and, upon finding that jurisdiction exists, to:

- a. conduct investigations into the matters described in the complaint; and
- b. to determine the specific statute(s) and/or regulation(s) which appear to have been violated; and
- c. to assess the severity of the violation(s) and to make a recommendation for disciplinary action(s) to be imposed by the board.

3. The appointed members of the complaint review committee shall remain anonymous.

#### **C. Presenting the Findings and Recommendations to the Board**

1. The findings and recommendations of the complaint review committee shall be presented to the respondent in an informal disposition meeting offered as an alternative to an administrative public hearing. The informal disposition may be accomplished by certified, return-receipt-requested mailings or by teleconference at the discretion of the committee chairperson.

2. Any respondent who wishes to accept the findings and recommendations of the complaint review committee and allow the board to ratify those actions without benefit of an administrative public hearing must verify this decision in writing. The respondent shall agree that the board may review the findings and recommendations of the complaint review committee. The respondent shall agree that the board shall not become tainted or prejudiced by its review of the complaint committee's findings and recommendations in the event an administrative hearing is held or in the event an appeal is taken.

3. Upon hearing the findings and recommendations of the complaint review committee, the members of the board may choose to:

- a. accept and ratify the findings, in which case the matter will be considered resolved and a consent order will be drawn up for execution by all parties; or
- b. amend the findings and recommendations of the complaint review committee, in which case the matter shall be returned to the informal disposition process; or
- c. reject the findings and recommendations of the complaint review committee, in which case the board shall indicate the areas in which additional investigation and/or information is required to be able to render a decision as to the merits of the case.

4. At least three members of the board must reach a consensus to render discipline or close a matter brought before it.

5. The member of the board serving as the chairperson of the complaint review committee shall not vote in the matters described in Subsection C.3 and the board president shall vote. However, in the event the vote is tied, the chairperson may vote.

#### **D. The Appeal Process**

1. Except in situations in which the respondent has waived his right to a public hearing and/or to an appeal, the respondent has the right to appeal the decision of the board in accordance with §105.C, whether such decision is rendered by judgment via an administrative public hearing or by decision at an informal disposition meeting. In the aforementioned cases, the 30-day period for making an appeal shall begin on the date recorded on the return-receipt card for the certified mailing of the final judgment or consent order. In the case of refusal to accept a certified letter, the 30-day appeal period shall begin on the date of the mailing of the document.

2. Any other person aggrieved by the decision of the board in a complaint proceeding may appeal that decision in accordance with §105.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:345 (March 1993), amended LR 23:967 (August 1997).

Charles B. Mann  
Executive Director

9708#016

## RULE

### Department of Health and Hospitals Board of Veterinary Medicine

#### Preceptorship Program (LAC 46:LXXXV.Chapter 11)

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.Chapter 11 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 11. Preceptorship Program

##### §1103. Definitions

*Fourth Year*—the final year of study for a Doctor of Veterinary Medicine degree, or equivalent, at an accredited school of veterinary medicine.

\* \* \*

*Preceptorship Program*—a preceptorship program approved by the Louisiana Board of Veterinary Medicine which involves no less than five nor more than 10 weeks.

1. Until April 30, 1998, the program shall consist of not less than five weeks in training in an approved private clinical practice situation under the direct supervision of a practicing licensed veterinarian.

2. On or after May 1, 1998, the program shall consist of not less than eight calendar weeks in training in an approved private clinical practice situation under the direct supervision of a practicing licensed veterinarian.

3. For students graduating in calendar year 1999 and 2000, the program must be performed after May of the third year of study.

4. For students graduating in 2001 and thereafter, the program must be performed after January of the fourth year of study.

5. Changes in the program that are effective on or after May 1, 1998, shall not apply to students graduating in calendar years prior to 1999.

\* \* \*

*Third Year*—the year preceding the final year of study for a Doctor of Veterinary Medicine degree, or equivalent, at an accredited school of veterinary medicine.

*Week in Training*—a week in training shall consist of no more than 40 hours earned during no more than six days within a calendar week.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 19:208 (February 1993), LR 23:968 (August 1997).

##### §1119. Preceptorship Attendance Log

Each preceptee shall be required to keep a daily log of his attendance for the duration of the program, and the form shall be reviewed and signed by the preceptor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:234 (March 1990), amended LR 23:968 (August 1997).

##### §1121. Evaluations

At the conclusion of the preceptorship program, the preceptor and preceptee shall complete an evaluation form provided by the board and return the completed form to the board office within 10 days of completion of the preceptorship program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:234 (March 1990), amended LR 23:968 (August 1997).

Charles B. Mann  
Executive Director

9708#049

## RULE

### Department of Health and Hospitals Board of Veterinary Medicine

#### Professional Conduct—Specialty List (LAC 46:LXXXV.1063)

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.1063 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, R.S. 37:1518 et seq.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 10. Professional Conduct

##### §1063. Specialty List

A. ...

B. A veterinarian may not use the term *specialist* for an area of practice for which there is not AVMA recognized certification.

C. A diplomate of the American Board of Veterinary Practitioners can claim only a specialty for the class of animals in which he specializes, not for medical specialties unless he is board-certified in those medical specialties.

D. The term *specialty* or *specialists* is not permitted to be used in the name of a veterinary hospital unless all veterinary staff are board-certified specialists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518(A)(9).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 23:968 (August 1997).

Charles B. Mann  
Executive Director

9708#048

## RULE

### Department of Health and Hospitals Board of Veterinary Medicine

#### Veterinary Practice (LAC 46:LXXXV.Chapter 7)

The Board of Veterinary Medicine hereby amends LAC 46:LXXXV.Chapter 7 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518 et seq. and adopts a rule relative to alternative medicine, §712.

#### Title 46

### PROFESSIONAL AND OCCUPATIONAL STANDARDS

#### Part LXXXV. Veterinarians

#### Chapter 7. Veterinary Practice

##### §701. Record Keeping

A. It shall be considered unprofessional conduct within the meaning of R.S. 37:1526(14) for a licensed veterinarian to keep improper records. The purpose of these regulations is to produce a record such that a veterinary peer can, by using said records, gain a full understanding of the findings, diagnostic process, reasons for treatment protocol, and applicability of surgical procedures. Records shall be legible, and established and maintained as follows:

1. - 2. ...

B. Patient records shall be maintained for a period of five years and are the responsibility and property of the veterinarian. The veterinarian shall maintain such records and shall not release the records to any person other than the client or a person authorized to receive the records for the client. The veterinarian shall provide any and all records as requested by the board to the board. Failure to do so shall be considered unprofessional conduct.

C. Copies or synopsis of patient records shall be provided to the client or the client's authorized representative upon request of the client. A reasonable charge for copying and providing patient records may be required by the veterinarian. Refusal to provide such records upon written request by the client shall be considered a violation of the rules of professional conduct within the meaning of R.S. 37:1526. A synopsis record shall include at a minimum the following information: name or identification of animal or herd, name of owner, all dates of treatment, and the complaint, any abnormal findings, diagnosis, and therapy, including the amount administered and the method of administration of all drugs, chemicals and medications, and surgical procedures performed for each date of treatment.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 6:71 (February 1980) amended LR 16:225 (March 1990), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1329 (October 1993), LR 20:1381 (December 1994), LR 23:969 (August 1997).

##### §707. Accepted Livestock Management Practices

The following are hereby declared to be accepted livestock management practices as provided by 37:1514(3):

1. the practice of Artificial Insemination (A.I.) and the nonsurgical impregnation (with frozen embryo) of farm animals to include that performed for a customer service fee or that on individually-owned animals;

2. the procedure involving the collection, processing, and freezing of semen from privately owned animals carried out by NAAB-CSS approved artificial insemination business organizations;

3. the carrying out of schools and short courses, teaching A.I. Techniques to cattlemen, prospective A.I. technicians, and university agricultural students by qualified university faculty, cooperative extension service specialists, and qualified employees of NAAB-CSS approved A.I. organizations;

4. performing the operation of male castration, docking, or earmarking of animals raised for human consumption;

5. performing the operation of dehorning cattle;

6. aiding in the nonsurgical birth process in livestock management;

7. treating animals for disease prevention with a nonprescription medicine or vaccine;

8. branding for identification of animals;

9. reciprocal aid of neighbors in performing accepted livestock management practices without compensation;

10. shoeing horses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Veterinary Medicine, LR 9:213 (April 1983), amended by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 23:969 (August 1997).

##### §709. Surgical Services

A. - B. ...

C. Hot and cold running water should be readily accessible to the surgery room.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1330 (October 1993), amended LR 23:969 (August 1997).

##### §711. Definitions for Classification of Practice Facilities

In order to be classified as, advertised as, or use the word "hospital" as defined in §700 in the name of a veterinary facility, all of the following minimum standards and requirements shall be met:

1. - 4. ...

5. Facility shall have access to a diagnostic x-ray machine and development equipment area kept in compliance with state and federal regulations.

6. - 8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1331 (October 1993), amended LR 23:969 (August 1997).

#### §712. Alternative Medicine

Alternative therapies, including, but not limited to, ultrasonography, magnetic field therapy, holistic medicine, homeopathy, chiropractic treatment, acupuncture, and laser therapy shall be performed only by a licensed veterinarian or under the direct supervision of a licensed veterinarian, except that no unlicensed person may perform surgery, diagnosis, prognosis, or prescribe drugs, medicines, or appliances as stated in §702.A.2 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 23:970 (August 1997).

Charles B. Mann  
Executive Director

9708#047

### RULE

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

#### Nursing Facility Services—Standards for Payment (LAC 50:II.Chapter 101)

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

#### Title 50

#### PUBLIC HEALTH—MEDICAL ASSISTANCE

#### Part II. Medical Assistance Program

#### Subpart 3. Standards for Payment

#### Chapter 101. Standards for Payment for Nursing Facilities

#### Subchapter A. Abbreviations and Definitions

#### §10101. Definitions

\*\*\*

*Assistant Director of Nursing (ADON)*—a licensed nurse responsible for providing assistance to the Director of Nursing (DON) in a nursing facility with a licensed bed capacity of 101 or more.

\*\*\*

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 23:970 (August 1997).

#### §10121. Nursing Services

A. - B.6. ...

C. Assistant Director of Nursing. If the director of nursing has administrative responsibilities or the nursing facility has a licensed bed capacity of 101 or more, the facility shall have a full-time Assistant Director of Nursing (ADON).

D. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 23:970 (August 1997).

#### §10155. Standards for Levels of Care

A. - N.3.d. ...

#### O. Rehabilitation and Complex Levels of Care

1. These levels of care were developed to provide services and care to residents who have sustained severe neurological injury or who have conditions which have caused significant impairment in their ability to independently carry out activities of daily living. Residents shall have, based upon a physician's assessment, the potential for regaining a level of functioning which is feasible. Significant practical improvement must be expected in a prescribed or predetermined period of time. An expectation of complete independence in the activities of daily living is not necessary, but there must be a reasonable expectation of improvement that will be of practical value to the resident measured against his/her condition at the start of care.

2. The health conditions of the individuals who qualify for either of these levels of care are too medically complex or demanding for a typical skilled nursing facility, but no longer warrant care in an acute setting. Reimbursement is available under the Title XIX program for a period not to exceed 90 days if medical eligibility criteria established by the department have been met. Extensions may be requested in 30-day increments up to a maximum of three extensions based on documentation contained in progress reports. Level of care certification cannot exceed a total of six months. The Health Standards Section shall review the documentation submitted by the facility and determine if the applicant meets the criteria for admission certification and continued stay at these levels of care.

3. The rehabilitation and complex levels of care shall utilize the *Consumer Price Index for All Urban Consumers—Southern Region, All Items Economic Adjustment Factors*, as published by the United States Department of Labor to give yearly inflation adjustments. This economic adjustment factor is computed by dividing the value of All Items index for December of the year preceding the rate year (July 1 through June 30) by the value of the All Items index one year earlier (December of the second preceding year). This factor, All Items, will be applied to the total base which excludes fixed cost. Rebasings and interim adjustments to rates shall be calculated in the same manner as for regular nursing facilities.

4. Annual financial and compliance audits are required from the providers of these services. Additional cost reporting documents as requested by the department may also be required. Providers are required to segregate these costs

from all other nursing facility costs and submit a separate annual cost report for each level of care (rehabilitation and complex care services). Medicare cost principles found in the Provider Reimbursement Manual (HIM-15) shall be used to determine allowable costs.

P. Criteria for Certification of SN Rehabilitation and SN-Complex Level of Care, and Provision of Services

1. Medical Eligibility Criteria for Certification of SN-Rehabilitation Level of Care. Residents seeking skilled services at the SN Rehabilitation level of care shall meet all of the following criteria:

a. require an intense, individualized rehabilitation program designed to address severe neurological deficits (not due to a psychiatric disorder) caused from an injury or neurological condition which shall have occurred within six months from the date of admission;

b. have a severe loss of function (not secondary to behavioral deficits) in activities of daily living, mobility, and communication with the potential for significant practical improvement as measured against his/her condition prior to rehabilitation;

c. shall be capable of participating in a minimum of two hours of active (not passive) rehabilitation (OT, PT, ST) per day;

d. require a minimum of 5.5 hours of nursing care per day. Monitoring of behaviors by attendants cannot be considered as meeting the required nursing hours;

e. require aggressive medical support and a coordinated program of care delivered through a multidisciplinary team approach;

f. demonstrate documented, measurable progress toward the reduction of physical, cognitive and/or behavioral deficits to qualify for continued funding at this level of care.

2. Exclusionary Criteria for SN-Rehabilitation Services. Residents meeting any one of the following criteria do not qualify for this level of care:

a. the resident has already participated in a comprehensive rehabilitation effort on an inpatient basis either in an acute care setting or other type of rehabilitation facility;

b. the resident has a neurological condition which is considered to be progressive in nature and where no practical improvement can be expected (e.g., Huntington's Chorea);

c. the resident requires medication adjustment or attention to psychological problems related to a neurological condition or injury but has the ability to carry out the basic activities of daily living;

d. the resident lives out of state and has access to rehabilitation services in his/her state of residence;

e. the resident does not have sufficient mental alertness to actively participate in the program;

f. the resident has a major psychiatric disorder (schizophrenia, manic-depression, etc.) which precludes active participation;

g. the resident with an uncomplicated CVA whose needs can be met at the skilled level of care.

3. Medical Eligibility Criteria for Certification of SN-Complex Level of Care. Residents seeking skilled services at the complex level of care shall meet all of the following criteria:

a. have a neurological injury/condition resulting in severe functional, cognitive and/or physical deficits which shall have occurred within six months from the date of admission;

b. require a level of care and services which are not able to be provided in a typical skilled nursing facility or on an outpatient basis. Facility documentation must specify why an alternative setting is inappropriate or inadequate to meet the needs of the resident;

c. require a minimum of 4.5 hours of nursing care per day;

d. shall be capable of participating in a minimum of two hours of active (not passive) rehabilitation per day.

4. Provision of Therapy Services for SN Rehabilitation and Complex Level of Care. Therapy services must be rendered on a per resident basis by a licensed therapist. Skilled therapy services must meet all of the following conditions:

a. the services must be directly and specifically related to an active written treatment plan designed by the physician after any needed consultation with a multidisciplinary team including a licensed therapist(s);

b. therapies shall be available and provided at least five days per week. If the resident is unable to participate or refuses to participate, the facility shall document the reason for nonparticipation and shall promptly notify the Health Standards Section;

c. the services must be of a level of complexity and sophistication, or the condition of the resident must be of a nature that requires the judgment, knowledge, and skills of a licensed therapist(s);

d. the services must be provided with the expectation, based on the assessment made by the physician of the resident's restoration potential, that the condition of the resident will improve materially in a reasonable and generally predictable period of time, not to exceed 90 days, or the services must be necessary for the establishment of a safe and effective maintenance program which can be continued after discharge;

e. the services must be considered under accepted standards of medical practice to be specific and effective treatment for the resident's condition;

f. the services must be reasonable and necessary for the treatment of the resident's condition; this includes the requirement that the amount, frequency, and duration of the services must be reasonable and not able to be provided in a less restrictive setting such as outpatient. Documentation by the facility must support that rehabilitation services are actually needed on an inpatient basis. When the resident has behavior or physical limitations that cannot be modified any further, the level of care shall be discontinued. There must be significant practical improvement as measured against the condition or injury prior to the episode which resulted in admission—significant improvement being the ability to self-perform activities of daily living;

g. therapy cannot be provided at the skilled level of care. The medical record shall document why the therapy cannot be provided at a lower level of care;

h. recreational therapies shall not be included when determining compliance with the required number of hours of therapy a day.

5. Criteria for Discharge from the Rehabilitation and Complex Levels of Care

a. there is evidence in the medical record that the resident has achieved stated goals;

b. medical complications preclude an intensive rehabilitation effort. Any regression or deterioration in the resident's medical condition shall immediately be reported to the Health Standards Section;

c. multidisciplinary therapy is no longer needed;

d. no additional practical improvement in function is anticipated;

e. the resident's functional status has remained unchanged for 14 days;

f. the resident has received services for 90 days;

g. if the resident exhibits inability or refuses to participate in therapy, this shall constitute termination of rehabilitation services and/or recertification for level of care. Discharge shall be initiated when the resident fails to participate in five consecutive therapy sessions during a two-week period;

h. the resident has an established behavior management plan.

Q. Documentation Requirements for Vendor Payment

1. Documentation Requirements for the Determination of Medical Eligibility for Vendor Payment. The following documentation requirements shall be submitted to the Health Standards Section for consideration of medical certification at either the rehabilitation or complex levels of care:

a. Form 148 (Notification of Admission/Change);

b. Form 90-L (Request for Level of Care Determination);

c. Level I PAS/RAS (Pre-admission Screening/ Re-admission Screening);

d. history of current condition;

e. presenting problems and current needs;

f. if transferring from an acute care hospital, all therapy evaluations, therapy progress reports, physician's orders and physician progress notes;

g. assessments done by facility field evaluators;

h. evaluations done by all facility therapists participating in the individual treatment plan;

i. preliminary plan of care including services to be rendered; plan should specify frequency, responsible discipline, and projected time frame for completion of each goal.

2. Documentation of Progress. The facility shall document, in detail, progress in meeting goals.

a. Progress reports shall be submitted to the Health Standards office every 30 days. Progress reports shall address the resident's ability to self-perform activities of daily living. If there is no progress in this area, it shall be so stated.

b. Active discharge planning shall be addressed in all progress reports. If the established goal is to return home, involvement by family members or significant others shall be noted in progress reports.

c. It is not necessary that progress reports recapitulate events resulting in admission.

d. It is the responsibility of the facility to promptly notify the Health Standards Section when goals have been achieved or the resident is not making progress toward meeting established goals, regardless of the amount of time in the program.

R. Facility Responsibilities for Participation. The facility seeking to provide services under the rehabilitation and complex level of care must meet all of the following requirements:

1. be licensed to provide nursing facility services and shall admit and maintain residents requiring any nursing facility level of care designation;

2. have a valid Medicaid Program provider agreement for provision of nursing facility services;

3. have entered into a contractual agreement with the Bureau of Health Services Financing to provide rehabilitation and complex care services;

4. be accredited by the Joint Commission on Accreditation on Health Care Organizations (JCAHO) and by the Commission on Accreditation of Rehabilitation Facilities (CARF);

5. have appropriate rehabilitation services to manage the complex functional and psychosocial needs of the residents and appropriate medical services to evaluate and treat the pathophysiologic process. The staff shall have intensive specialized training and skills in rehabilitation;

6. provide an interdisciplinary team of professionals to direct the clinical course of treatment. This team shall include, but is not limited to a physician, registered nurse, physical therapist, occupational therapist, speech/language therapist, respiratory therapist, psychologist, social worker, recreational therapist, and case manager;

7. ensure that the health and rehabilitation needs of every resident in certified for rehabilitation/complex level of care shall be under the supervision of a licensed physiatrist, board-certified or board-eligible in physical medicine and rehabilitation;

8. have policies and procedures to ensure that a licensed physician visits and assesses each resident's care frequently but no less than weekly;

9. have formalized policies and procedures to furnish necessary medical care in cases of emergency and provide 24-hour-a-day access to services in an acute care hospital;

10. have established policies to screen residents who are not appropriate for the program according to the Medicaid medical eligibility criteria or whose needs the facility cannot meet;

11. have each resident assigned to a facility case manager to monitor, measure, and document goal attainment and functional improvement. The case manager shall be responsible for cost containment and appropriate utilization of services. Coverage should stop when further progress toward the established rehabilitation goals are unlikely or can be achieved in a less intensive setting;

12. assure that discharge planning is an integral part of the rehabilitation program and should begin upon the resident's admittance to the facility. Plans of care must be

individualized and aggressive with regard to the projected time frame for discharge. When progress notes show that the resident has not made significant, measurable progress from one review period to the next or that the condition cannot be modified any further, Medicaid will not authorize further reimbursement for rehabilitation. Significant progress should be the ability to self-perform or require only minimal to moderate assistance to perform activities of daily living;

13. provide private rooms for residents demonstrating extraordinary medical and/or behavioral needs. Dedicated treatment space shall be provided for all treating disciplines including the availability of distraction-free individual treatment rooms and areas;

14. provide 24-hour nursing services to meet the medical and behavioral needs with registered nurse coverage 24 hours per day, seven days a week. Management of the resident's daily activities shall be under the direct supervision of a registered nurse;

15. provide appropriate methods and procedures for dispensing and administering medications and biologicals that are in accordance with the organizations issuing the facility's accreditations;

16. have formalized policies and procedures for ongoing staff education in rehabilitation, respiratory, specialized medical services, and other related clinical and nonclinical issues. Staff education shall be provided on a regular basis;

17. provide dietary services to meet the comprehensive nutritional needs of the residents. These services shall be provided under the direction of a registered dietician who shall consult a minimum of two hours per month;

18. provide families/significant others the opportunity to participate in the coordination and facilitation of service delivery and individual treatment plan;

19. provide nonmedical and nonemergency medical transportation services and arrange for medical transportation services to meet the medical/social needs of the residents;

20. provide initial and ongoing integrated, interdisciplinary assessments to develop treatment plans which should address medical/neurological issues such as sensorimotor, cognitive and perceptual deficits, communicative capacity, affect/mood, interpersonal and social skills, behaviors, ADLs, recreation/leisure skills, education/vocational capacities, sexuality, family, legal competency, adjustment to disability, post-discharge services environmental modifications, and all other areas deemed relevant for the individual;

21. assure that the interdisciplinary team meets in conference at least every 14 days to update the individual treatment plan but as often as necessary to address the changing needs of the client;

22. provide appropriate consultation services to meet the needs of clients, including, but not limited to, audiology, orthotics, prosthetics, or any other specialized services;

23. establish a protocol for ongoing contact with professionals in vocational rehabilitation education, mental health, developmental disabilities, Social Security, medical assistance, head injury advocacy groups and any other relevant community agencies;

24. establish protocols to provide for a close working relationship with acute care hospitals capable of caring for persons with brain and upper spinal cord injuries to provide post discharge follow-up, in-service education and on-going training of treatment protocols to meet the needs of residents;

25. establish written policies and procedures to address referrals coming from out of state. The facility must provide written explanation as to what steps were taken to obtain services within the state of residence and why the services were not available or inadequate to meet the needs of the resident. The facility shall seek reimbursement for all level of care services from the state of residence or referral prior to making application for Louisiana Medicaid.

S. - T. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 23:970 (August 1997).

## **Subchapter I. Resident Rights**

### **§10161. General Provisions**

A. - E. ...

F. Notice of Rights and Services

F.1 - F.3. ...

4. rules for conduct at the time of their admission and subsequent changes during their stay in the facility:

4.a. ...

b. the resident or legal representative has the right to access all records pertaining to the resident, including clinical records. Photocopies of the entire record or portions of the record shall be made available to the resident within 48 hours from time of oral or written request at a cost comparable to community standards.

5. - 6.c. ...

7. the facility shall inform Medicaid-eligible and potential Medicaid-eligible residents in writing at time of admission and periodically during the resident's stay of the following information:

a. those items and services included in nursing facility services covered under the Medicaid Program for which the resident may not be charged;

b. those items and services that are offered by the facility, but are not covered under the Medicaid Program, the Medicare Program or the facility's per diem rate. The facility may charge the resident if he/she chooses to have these services. The itemized charges for these services shall be made available to the resident;

c. changes made to the items and services that are available in the facility;

d. inform each resident, before or at the time of admission and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare/Medicaid or by the facility's per diem rate;

8. furnish a written description of legal rights which includes:

a. a description of the manner of protecting personal funds as outlined in §10161.J, K, and L;

b. a description of the requirements and procedures for establishing eligibility for Medicaid;

c. a posting of names, addresses, and telephone numbers of all pertinent state client advocacy groups such as the Bureau of Health Services Financing, Health Standards Section, the State Ombudsman Program, the Protection and Advocacy Network, and the Medicaid Fraud Control Unit;

d. a statement that the resident may file a complaint with the Bureau of Health Services Financing, Health Standards Section concerning resident abuse, neglect, and misappropriation of resident property in the facility;

e. inform each resident of the name, specialty, and way of contacting the physician responsible for his/her care;

f. prominently display written information in the facility and provide to residents and applicants on admission oral and written information about how to apply for and use Medicare and Medicaid benefits and how to receive refunds for previous payments covered by such benefits.

G. - M.2.h.ii. ...

i. Access and Visitation Rights. The resident has visitation rights and the facility must provide immediate access to any resident by the following individual or agencies:

M.2.i.i. - M.2.i.viii. ...

ix. the resident may visit overnight outside the facility with family and friends in accordance with the facility policies, physician's orders, and Title XVIII (Medicare) and Title XIX (Medicaid) regulations without the loss of his/her bed. Home visit policies and procedures for arranging home visits shall be fully explained.

M.2.i.ix.(a). ...

(b). The facility must allow certified representatives of the state ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

M.2.i.ix.(c). - M.2.n. ...

o. Smoking. Residents have the right to use tobacco at their own expense under the facility's safety rules and the state's applicable laws and rules. Residents shall be informed of any medical contraindications.

M.2.p. - P.5. ...

Q. Freedom from Restraints and Abuse. Residents shall have the right to be free from verbal, sexual, physical or mental abuse; corporal punishment; involuntary seclusion and/or any physical or chemical restraints imposed for the purpose of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed:

Q.1. - Q.2. ...

3. physical restraint may only be applied in a case of emergency by a qualified licensed nurse who shall document in the medical record the circumstances that necessitated the use of restraints and shall notify the physician immediately thereafter.

Q.4. - Q.4.a.i. ...

5. psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan

(included in the written Plan of Care) designed to eliminate or modify the symptoms for which the drugs are prescribed.

Q.6. - U.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 23:973 (August 1997).

## **Subchapter J. Transfer and Discharge Procedure**

### **§10163. General Provisions**

A. - D.1.e. ...

E. For health facilities the written notice as described in §10163 must include the following:

E.1. - E.3. ...

4. a statement regarding appeal rights that reads:

"You or someone acting on your behalf has the right to appeal the health facility's decision to transfer you. If you think you should not have to leave this facility you may file a written request for a hearing postmarked within 30 days after you receive this notice. If you request a hearing, it will be held within 30 days after the facility notifies the Bureau of Appeals of the witnesses who shall testify at the discharge hearing as well as the documents that will be submitted as evidence. You will not be transferred from the facility until a final appeal decision has been reached or until the Bureau of Appeals gives permission for an interim transfer at a prehearing conference held at the request of the facility. The only exception to the above would be that a physician has certified that your being in the facility would present a threat to the health or safety of other individuals in the facility. If you wish to appeal this transfer or discharge, a form to appeal the health facility's decision and to request a hearing is attached. If you have any questions, call the Louisiana Department of Health and Hospitals at the number listed below";

5. the name of the director, and the address, telephone number, and hours of operation of the Bureau of Appeals of the Louisiana Department of Health and Hospitals;

6. the name, address, and telephone number of the state long-term care ombudsman;

7. for health facility residents with developmental disabilities or who are mentally ill, the mailing address and telephone number of the protection advocacy services commission.

F. Appeal of Transfer or Discharge

1. If the resident appeals the transfer or discharge, a statement regarding appeal rights that reads:

"You or someone acting on your behalf has the right to appeal the health facility's decision to transfer you. If you think you should not have to leave this facility you may file a written request for a hearing postmarked within 30 days after you receive this notice. If you request a hearing, it will be held within 30 days after the facility notifies the Bureau of Appeals of the witnesses who shall testify at the discharge hearing as well as the documents that will be submitted as evidence. You will not be transferred from the facility until a final appeal decision has been reached or until the Bureau of Appeals gives permission for an interim transfer at a prehearing conference held at the request of the facility. The only exception to the above would be that a physician has certified that your being in the facility would present a threat to the health or safety of other individuals in the facility. If you wish to appeal this transfer or discharge, a form to appeal the health facility's decision and to request a hearing is attached. If you have any questions, call the Louisiana Department of Health and Hospitals at the number listed below";

F.2. - I.3.b.ii.(b). ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 22:34 (January 1996), amended LR 23:974 (August 1997).

Bobby P. Jindal  
Secretary

9708#085

## RULE

### Department of Insurance Office of the Commissioner

#### Regulation 46—Long-Term Care Insurance

Under the authority of R.S. Title 22, Sections 3, 1736(A), 1736(E), and 1737 and Title 49, Section 950 et seq., the Department of Insurance gives notice that the following regulation is effective on January 1, 1998. This action complies with the statutory law administered by the Department of Insurance.

Existing Regulation 46 of the Department of Insurance is repealed as of effective date of this regulation.

#### Section 1. Purpose

The purpose of this regulation is to implement R.S. 22:1731-1737, Long-Term Care Insurance Act, to promote the public interest; to promote the availability of long-term care insurance coverage; to protect applicants for qualified and nonqualified long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices; to facilitate public understanding and comparison of long-term care insurance coverages; and to facilitate flexibility and innovation in the development of long-term care insurance.

#### Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner under R.S. 22:1736(A); R.S. 22:1736(E); R.S. 22:1737; and R.S. 49:950 et seq.

#### Section 3. Applicability and Scope

Except as otherwise specifically provided, this regulation applies to all long-term care insurance policies [or certificate issued pursuant to such group policy] delivered, or issued for delivery, in this state on or after the effective date hereof, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations; and all similar organizations.

#### Section 4. Definitions

For the purpose of this regulation, the terms *Long-Term Care Insurance*, *Group Long-Term Care Insurance*, *Qualified Long-Term Care Insurance Contract*, *Qualified Long-Term Care Services*, *Commissioner*, *Applicant*, *Policy*, and *Certificate* shall have the following meanings:

A.(1) *Long-Term Care Insurance*—any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than 12 consecutive months for each covered person on an expense incurred, indemnity, prepaid, or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative,

maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital.

(2) Such term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Such term shall also include qualified long-term care insurance contracts. Long-term care insurance may be issued by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations; or any similar organizations to the extent they are otherwise authorized to issue life or health insurance.

(3) Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.

(4) With regard to life insurance, this term does not include life insurance policies which accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care.

(5) Notwithstanding any other provision contained herein, any product advertised, marketed or offered as long-term care insurance shall be subject to the provisions set forth in Section 28 of this regulation.

#### B. *Applicant*—

(1) in the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(2) in the case of a group long-term care insurance policy, the proposed certificate holder.

C. *Certificate*—for the purposes of this regulation, any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state.

D. *Commissioner*—the Insurance commissioner of this state.

E. *Group Long-Term Care Insurance*—a long-term care insurance policy which is delivered or issued for delivery in this state and issued to:

(1) one or more employers or labor organizations; or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof; for employees or former employees or a combination thereof; or for members or former members, or a combination thereof, of the labor organizations; or

(2) any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association:

(a) is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

(b) has been maintained in good faith for purposes other than obtaining insurance; or

(3) an association or a trust or the trustee(s) of a fund established, created, or maintained for the benefit of members of one or more associations. Prior to advertising, marketing, or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the commissioner that the association or associations have at the outset a minimum of 100 persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws which provide that:

(a) the association or associations hold regular meetings not less than annually to further purposes of the members;

(b) except for credit unions, the association or associations collect dues or solicit contributions from members; and

(c) the members have voting privileges and representation on the governing board and committees.

Thirty days after such filing the association or associations will be deemed to satisfy such organizational requirements, unless the commissioner makes a finding that the association or associations does not satisfy those organizational requirements.

(4) a group other than as described in Subsection E.(1), E(2) and E(3), subject to a finding by the commissioner that:

(a) the issuance of the group policy is not contrary to the best interest of the public;

(b) the issuance of the group policy would result in economies of acquisition or administration; and

(c) the benefits are reasonable in relation to the premiums charged.

F. *Policy*—for the purposes of this regulation, any policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer; fraternal benefit society; nonprofit health, hospital, or medical service corporation; prepaid health plan; health maintenance organization or any similar organization.

G.(1) *Qualified Long-Term Care Insurance Contract*—any individual or group insurance contract, if it meets the requirements of Section 7702(B) of the *Internal Revenue Code*, as amended, and if:

(a) the only insurance protection provided under the contract is coverage of qualified long-term care services;

(b) the contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this Paragraph do not apply to contracts where Medicare is a secondary payor, or where the contract makes per diem or other periodic payments without regard to expenses;

(c) the contract is guaranteed renewable;

(d) the contract does not provide for a cash surrender value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed. All refunds of premiums, and all policyholder dividends or similar amounts under such contract are to be applied as a reduction in future premiums or to increase future benefits, except that a refund of the aggregate premium paid under the contract may be allowed in the event of death of the insured or a complete surrender or cancellation of the contract; and

(e) the contract contains the consumer protection provisions set forth in Section 7702(B)(g) of the *Internal Revenue Code*.

(2) *Qualified Long-Term Care Insurance Contract*—any life insurance contract which provides long-term care coverage by rider, or as part of the contract, as long as the contract complies with the applicable provisions of Section 7702(B) of the *Internal Revenue Code*, as amended.

H. *Qualified Long-Term Care Services*—necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services to which an insured is eligible for under a qualified long-term care insurance contract, and which are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

#### Section 5. Policy Definitions

No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

A. *Activities of Daily Living*—at least bathing, continence, dressing, eating, toileting, and transferring.

B. *Acute Condition*—that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his or her health status.

C. *Adult Day Care*—a program for six or more individuals, of social and health-related services provided during the day in a community group setting for the purpose of supporting frail, impaired elderly or other disabled adults who can benefit from care in a group setting outside the home.

D. *Bathing*—washing oneself by sponge bath; or in either a tub or shower, including the task of getting into or out of the tub or shower.

E. *Cognitive Impairment*—a deficiency in a person's short or long-term memory, orientation as to person, place, and time, deductive or abstract reasoning, or judgment as it relates to safety awareness.

F. *Continence*—the ability to maintain control of bowel and bladder function; or, when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for catheter or colostomy bag).

G. *Dressing*—putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

H. *Eating*—feeding oneself by getting food into the body from a receptacle (such as a plate, cup, or table) or by feeding tube or intravenously.

I. *Hands-On Assistance*—physical assistance (minimal, moderate, or maximal) without which the individual would not be able to perform the activity of daily living.

J. *Home Health Care Services*—medical and nonmedical services provided to ill, disabled, or infirmed persons in their residences. Such services may include homemaker services, assistance with activities of daily living, and respite care services.

K. *Medicare*—"the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted, and any later amendments or substitutes thereof," or words of similar import.

L. *Mental or Nervous Disorder*—shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

M. *Personal Care*—the provision of hands-on services to assist an individual with activities of daily living.

N. *Skilled Nursing Care, Intermediate Care, Personal Care, Home Care* and other services—shall be defined in relation to the level of skill required, the nature of the care, and the setting in which care must be delivered.

O. *Toileting*—getting to and from the toilet, getting on and off the toilet, and performing associated personal hygiene.

P. *Transferring*—moving into or out of a bed, chair, or wheelchair.

Q. All providers of services, including but not limited to *Skilled Nursing Facility, Extended Care Facility, Intermediate Care Facility, Convalescent Nursing Home, Personal Care Facility, and Home Care Agency*—shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

## Section 6. Policy Practices and Provisions

Unless otherwise noted, all provisions of this Section shall also apply to qualified long-term care insurance contracts.

A. *Renewability*. The terms *guaranteed renewable* and *noncancellable* shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 9 of this regulation.

(1) No such policy issued to an individual shall contain renewal provisions other than *guaranteed renewable* or *noncancellable*.

(2) The term *guaranteed renewable* may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(3) The term *noncancellable* may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums, during which

period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

(4) A qualified long-term insurance contract must be guaranteed renewable.

B. *Limitations and Exclusions*. No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(1) preexisting conditions or diseases;

(2) mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;

(3) alcoholism and drug addiction;

(4) illness, treatment or medical condition arising out of:

(a) war or act of war (whether declared or undeclared);

(b) participation in a felony, riot, or insurrection;

(c) service in the armed forces or units auxiliary thereto;

(d) suicide (sane or insane), attempted suicide, or intentionally self-inflicted injury; or

(e) aviation (this exclusion applies only to non-fare-paying passengers).

(5) treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare or other governmental program (except Medicaid), any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law; services provided by a member of the covered person's immediate family, and services for which no charge is normally made in the absence of insurance;

(6) this Subsection B is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

C. *Extension of Benefits*. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization, if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

### D. Continuation or Conversion

(1) Group long-term care insurance issued in this state on or after the effective date of this Section shall provide covered individuals with a basis for continuation or conversion of coverage.

(2) For the purposes of this Section, a *basis for continuation of coverage* means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium, when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group

policy. The commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.

(3) For the purposes of this Section, *a basis for conversion of coverage* means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

(4) For the purposes of this Section, *converted policy* means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels, and administrative complexity.

(5) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.

(6) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(7) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:

(a) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or

(b) the terminating coverage is replaced not later than 31 days after termination, by group coverage effective on the day following the termination of coverage:

(i) providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided by the terminating coverage; and

(ii) the premium for which is calculated in a manner consistent with the requirements of Paragraph (6) of this Section.

(8) Notwithstanding any other provision of this Section, a converted policy issued to an individual who, at the time of conversion, is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.

(9) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(10) Notwithstanding any other provision of this Section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(11) For the purposes of this Section, a *managed-care plan* is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

E. Discontinuance and Replacement. If a group long-term care policy is replaced by another group long-term care policy issued to the same policyholder, the succeeding insurer shall offer coverage to all persons covered under the previous group policy on its date of termination. Coverage provided or offered to individuals by the insurer and premiums charged to persons under the new group policy:

(1) shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced; and

(2) shall not vary or otherwise depend on the individual's health or disability status, claim experience, or use of long-term care services.

F. Premium Rate Filing

(1) An issuer of any contract of long-term care insurance in this state shall file annually, for informational purposes, its rates, rating schedule, and such supporting documentation as necessary to identify the type of long-term care insurance as either qualified or nonqualified, the corresponding policy form number, the percentage(s) of rate adjustments, and the rating methodology.

(2) All filings described in this Section shall be submitted to the commissioner by March 31 of each calendar year.

#### **Section 7. Unintentional Lapse**

Each insurer offering long-term care insurance shall, as a protection against unintentional lapse, comply with the following: