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Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Restrictions on Applications of Certain Pesticides Giant Salvinia on Lake Bistineau (LAC 7:XXIII.1103)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 3:3203, the commissioner of agriculture and forestry declares an emergency to exist and adopts by emergency process the attached regulations for the implementation of a herbicide application program by the Louisiana Department of Wildlife and Fisheries (LDWF) to manage the noxious aquatic weed Giant Salvinia in Lake Bistineau. The LDWF's herbicide application program will allow Louisiana property owners whose property adjoins Lake Bistineau to apply certain herbicides to control Giant Salvinia in, on and around their property.

The Lake Bistineau Task Force, the Louisiana Department of Wildlife and Fisheries, (LDWF), the Bienville Parish Police Jury, the Bossier Parish Police Jury, the Webster Parish Police Jury, the Saline Soil and Water Conservation District, the Bodcau Soil and Water Conversation District, the Dorcheat Soil and Water Conversation District and the Trailblazer Resource Conservation and Development Council have requested the adoption of these rules at the earliest possible date to begin spraying and controlling Giant Salvinia during the spring and summer prime growing season. Giant Salvinia was recently discovered on Lake Bistineau and has proliferated to the point that it threatens the continued productivity and usefulness of the lake itself.

This threat is not only to the native plants and animals that live in the lake and the biodiversity of that aquatic life, but also to the continued commercial and recreational use of the lake. The threat to the native aquatic life of Lake Bistineau to the continued commercial and recreational use of the lake and to the economy of this state is such that it creates an imminent peril to the public health, safety, and welfare of the citizens of this state, thereby requiring the promulgation of these emergency rules and regulations.

This Emergency Rule becomes effective upon the signature of the commissioner, March 1, 2012, and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 11. Regulations Governing Application of Pesticides

§1103. Restrictions on Application of Certain Pesticides

A. - J. ...

K. The commissioner hereby establishes a herbicide application permitting program for the Louisiana Department of Wildlife and Fisheries (LDWF) in, on and around the waters of Lake Bistineau.

1. Any person who applies or uses any herbicide or incorporates the use of any herbicide, for the management, control, eradication or maintenance of Giant Salvinia in, on or around the waters of Lake Bistineau, shall comply with all of the following requirements, prior to making any applications to Giant Salvinia in Lake Bistineau waters:

a. complete the LDWF designated Lake Bistineau spray permit training;

b. apply for and receive a herbicide application permit from the LDWF which shall be good for the remainder of the calendar year in which issued, but may be renewed annually by contacting the LDWF;

c. apply, use, or incorporate herbicides to be applied to or used on or for Giant Salvinia only as prescribed by the Lake Bistineau private spray training program;

d. prepare and maintain records of applications by recording accurate information as required on the Lake Bistineau application log sheet provided by the LDWF;

e. deliver (mail, hand deliver, e-mail, fax, etc.) to the Saline Soil and Water Conservation District office at P.O. Box 528, 2263 Hall Street, Ringgold, LA 71068 a completed copy of each Lake Bistineau application log sheet recording the information regarding an application or use of a herbicide on or for Giant Salvinia within 14 days of each application;

f. keep a completed copy of the application record form for a period of three years after application;

g. make application records available, during normal business hours, to any authorized person with the department, or LDWF.

2. Any person making applications to Lake Bistineau under contract with the LDWF, authorized LDWF employees and any person conducting a research project on Lake Bistineau with a Louisiana university or LDWF is exempted from the provisions of this Subsection, but are not exempted from any other provisions of this Part, except as may be provided therein.

L. - O.5.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007), LR 35:628 (April 2009), LR 36:1980 (September 2010), LR 37:269 (January 2011), LR 37:809

(March 2011), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3478 (December 2011), LR 38:

Brent Robbins, DVM
Deputy Commissioner

1203#002

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Restrictions on Applications of Certain Pesticides Giant Salvinia on Toledo Bend (LAC 7:XXIII.1103)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 3:3203, the commissioner of agriculture and forestry declares an emergency to exist and adopts by emergency process the attached regulations for the implementation of a herbicide application program by the Sabine River Authority, state of Louisiana (SRA) to manage the noxious aquatic weed Giant Salvinia in the Toledo Bend Reservoir (Toledo Bend). The SRA's herbicide application program will allow Louisiana property owners whose property adjoins Toledo Bend to apply certain herbicides to control Giant Salvinia in, on and around their property.

The SRA, the Louisiana Department of Wildlife and Fisheries, (LDWF), the LSU Agricultural Center (Ag Center), the Toledo Bend Residents Association, and Bass Unlimited have requested the adoption of these rules. The rules were adopted in March 2011. The rules were inadvertently removed by a clerical error when the complete set of rules for the Advisory Commission on Pesticides were re-numbered and published in the *Louisiana Register* in December 2011. Therefore, these rules need to be adopted at the earliest possible date in order to allow spraying and controlling Giant Salvinia during the spring and summer prime growing season.

Giant Salvinia was first discovered on Toledo Bend in 1998 and has proliferated to the point that it threatens the continued productivity and usefulness of the lake itself. This threat is not only to the native plants and animals that live in the lake and the biodiversity of that aquatic life, but also to the continued commercial and recreational use of the lake. The threat to the native aquatic life of Toledo Bend to the continued commercial and recreational use of the lake and to the economy of this state is such that it creates an imminent peril to the public health, safety, and welfare of the citizens of this state, thereby requiring the promulgation of these emergency rules and regulations.

This Emergency Rule becomes effective upon the signature of the commissioner and shall remain in effect for 120 days, unless renewed or until the permanent rules and regulations become effective.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 11. Regulations Governing Application of Pesticides

§1103. Restrictions on Application of Certain Pesticides

A. - I. ...

J. The commissioner hereby establishes a herbicide application permitting program for the Sabine River Authority, state of Louisiana (SRA) in, on and around the waters of the Louisiana portion of Toledo Bend Reservoir.

1. Any person who applies or uses any herbicide or incorporates the use of any herbicide, for the management, control, eradication or maintenance of Giant Salvinia in, on or around the waters of the Louisiana portion of Toledo Bend Reservoir, shall comply with all of the following requirements, prior to making any applications to Giant Salvinia in SRA waters:

a. complete the SRA designated Giant Salvinia applicator training program;

b. apply for and receive a herbicide application permit from the SRA which shall be good for the remainder of the calendar year in which issued, but may be renewed annually by contacting the SRA;

c. apply, use, or incorporate herbicides to be applied to or used on or for Giant Salvinia only as prescribed by the SRA herbicide application program;

d. prepare and maintain records of applications by recording accurate information as required on the Toledo Bend application log sheet provided by the SRA;

e. deliver (mail, hand deliver, e-mail, fax, etc.) to the SRA office at Pendleton Bridge Office, 15091 Texas Highway, Many, LA 71449 a completed copy of each Toledo Bend application log sheet recording the information regarding an application or use of a herbicide on or for Giant Salvinia within 14 days of each application;

f. keep a completed copy of the application record form for a period of three (3) years after application;

g. make application records available, during normal business hours, to any authorized person with the department, Department of Wildlife and Fisheries (LDWF), or the SRA.

2. Any person making applications to the Louisiana portion of Toledo Bend Reservoir under contract with the LDWF or SRA, authorized LDWF employees and any person conducting a research project on the Louisiana portion of Toledo Bend Reservoir with the LSU Agricultural Center, LDWF or SRA is exempted from the provisions of this Subsection, but are not exempted from any other provisions of this Part, except as may be provided therein.

K. - O.5.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007), LR 35:628 (April 2009), LR 36:1980 (September 2010), LR 37:269 (January 2011), LR 37:809 (March 2011), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:3478 (December 2011), LR 38:

Brent Robbins, DVM
Deputy Commissioner

1203#001

DECLARATION OF EMERGENCY

Department of Children and Family Services Division of Programs Economic Stability and Self-Sufficiency Section

KCSP Grant Reduction and Termination of Post-FITAP
Transitional Services (LAC 67:III.5329 and 5729)

The Department of Children and Family Services (DCFS), Economic Stability and Self-Sufficiency Section, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 13 Kinship Care Subsidy Program (KCSP), Chapter 53, Subchapter B, and Section 5329, and Subpart 16 Strategies to Empower People (STEP) Program, Chapter 57, Subchapter C, Section 5729. This Emergency Rule shall remain in effect for a period of 120 days and is effective March 29, 2012.

Pursuant to Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant, adjustments to KCSP eligibility criteria will reduce the income after pretest monthly limit and monthly payment amount from \$280 to \$222. The department is terminating the STEP Program's transitional support service benefits, which are commonly known as Post-FITAP Supportive Services.

Emergency action is required in this matter as funding is no longer available and the department is required to maintain fiscal responsibility by reducing expenditures to reconcile with available funding. These changes have been born of necessity to maximize available funding while minimizing the impact to clients. The adjustments to KCSP will result in minimal reductions in the number of children served and payment amounts. Transitional supportive services are approved at the discretion of the secretary and are subject to available funding.

The authorization for emergency action in this matter is the emergency provision of the Administrative Procedure Act, R.S. 49:953(B). If the department fails to timely reduce expenditures, the reduction in federal funding will result in the requirement of additional state general funds to maintain these programs.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 13. Kinship Care Subsidy Program

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5329. Income

A. - B.3. ...

C. Income after Pretest. The child is determined eligible for KCSP if the child's monthly countable income is, effective December 1, 2011, less than \$222. If the child's monthly countable income is, effective December 1, 2011, \$222 or more, the child is ineligible.

D. Payment Amount. Effective December 1, 2011, payment amount is \$222 per month for each eligible child.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session, 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:1617 (September 2006), LR 32:1913 (October 2006), repromulgated LR 32:2098 (November 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2537 (November 2010), LR 38:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter C. STEP Program Process

§5729. Support Services

A. Clients may be provided support services that include but are not limited to:

1. a full range of case maintenance and case management services designed to lead to self-sufficiency;
2. transportation assistance;
3. Supplemental Nutrition Assistance Program (SNAP) benefits;
4. Medicaid benefits;
5. child care;
6. TANF-funded services; and
7. other services necessary to accept or maintain employment.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR.32:2098 (November 2006), amended by the Department of Children and Family Services, Economic Stability and Self Sufficiency Section, LR 38:

Ruth Johnson
Secretary

1112#016

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Adult Day Health Care
Minimum Licensing Standards
(LAC 48:I.4203, 4207, 4227, 4245, and 4267)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.4203, §4207, §4227, §4245, and §4267 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.41-2120.46, and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the standards for payment for adult day health care (ADHC) services to remove those provisions governing licensing

from LAC 50:XXI and repromulgated the licensing standards in LAC 48:I (*Louisiana Register*, Volume 34, Number 10). The October 20, 2008 final Rules were repromulgated due to an error upon submission to the Office of State Register (*Louisiana Register*, Volume 34, Number 12).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the minimum licensing standards for ADHC centers to revise and clarify the staffing and transportation requirements (*Louisiana Register*, Volume 37, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Louisiana citizens by assuring continued access to ADHC services through the development of a more efficient licensing infrastructure in order to stimulate growth in the ADHC provider community.

Effective March 29, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the minimum licensing standards for adult day health care centers.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 42. Adult Day Health Care

Subchapter A. General Provisions

§4203. Definitions

* * *

Direct Service Worker—an unlicensed staff person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the participant.

Director—the person designated by the governing body of the ADHC to:

1. manage the center;
2. insure that all services provided are consistent with accepted standards of practice; and
3. ensure that center policies are executed.

* * *

Full Time Equivalent—40 hours of employment per week or the number of hours the center is open per week, whichever is less.

* * *

Key Staff—the designated program manager(s), social worker(s) or social services designee(s), and nurse(s) employed by the ADHC. A key staff person may also serve as the ADHC Director.

* * *

Program Manager—a designated staff person, who is responsible for carrying out the center's individualized program for each participant.

* * *

Social Service Designee/Social Worker—an individual responsible for arranging medical and/or social services needed by the participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2177 (October 2008), repromulgated LR

34:2622 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§4207. Initial License Application Process

A. - A.6. ...

a. line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000; and

b. general and professional liability insurance of at least \$300,000.

c. Repealed.

A.7. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008), repromulgated LR 34:2624 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter B. Administration and Organization

§4227. Policy and Procedures

A. - B.9. ...

C. The director, or his designee:

1. is responsible for the execution of ADHC center policies; and

2. shall be accessible to center staff or to any representative of the Department of Health and Hospitals conducting an audit, survey, monitoring activity, or research and quality assurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008), repromulgated LR 34:2628 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter D. ADHC Center Services

§4245. Transportation Requirements

A. - G. ...

H. Centers are expected to provide transportation to any client within their licensed region, but no client, regardless of their region of origin, may be in transport for more than one hour on any single trip.

1. If the center develops a policy that establishes a limited mileage radius for transporting participants, that policy must be submitted to DHH for review and approval prior to the center being allowed to limit transportation for participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2186 (October 2008), repromulgated LR 34:2631 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter G. Center Responsibilities

§4267. Staffing Requirements

A. Staff at ADHC centers shall meet the following education and experience requirements. All college degrees must be from a nationally accredited institution of higher education as defined in §102(b) of the Higher Education Act of 1965 as amended. The following "key" staff positions are required and subject to the provisions listed below.

1. Social Service Designee/Social Worker. The center shall designate at least one staff person who shall be

employed at least 10 hours a week to serve as the social services designee or social worker.

a. The social services designee shall have, at a minimum, a bachelor's degree in a human service-related field such as psychology, sociology, education, or counseling. Two years of experience in a human service-related field may be substituted for each year of college.

b. The social worker shall have a bachelor's or master's degree in social work.

2. Nurse. The center shall employ one or more LPNs or RNs who shall be available to provide medical care and supervision services as required by all participants. The RN or LPN shall be on the premises daily for at least 8 hours, the number of hours the center is open, or during the time participants are present at the center, whichever is least. Nurses shall have a current Louisiana state license.

a. - b. Repealed.

3. Program Manager. The center shall designate at least one staff member who shall be employed at least 10 hours a week to be responsible for carrying out the center's individualized program for each participant. The program manager should have program planning skills, good organization abilities, counseling and activity programming experience.

3.a. - 7.e. Repealed.

B. The following additional staff positions are required, subject to the provisions listed below:

1. Food Service Supervisor. The center shall designate one staff member who shall be employed at least 10 hours a week who shall be responsible for meal preparation and/or serving. The Food Service Supervisor must have ServSafe® certification.

2. Direct Service Worker. An unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well being, and who is involved in face-to-face direct contact with the participant.

3. Volunteers. Volunteers and student interns are considered a supplement to the required staffing component. A center which uses volunteers or student interns on a regular basis shall have a written plan for using these resources. This plan must be given to all volunteers and interns and it shall indicate that all volunteers and interns shall be:

a. directly supervised by a paid staff member;

b. oriented and trained in the philosophy of the center and the needs of participants as well as the methods of meeting those needs;

c. subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student;

d. aware of and briefed on any special needs or problems of participants; and

e. provided program orientation and ongoing in-service training. The in-service training should be held at least quarterly.

C. The direct service worker to participant ratio shall be a minimum of one full-time direct service worker to every nine participants.

D. Center staffing requirements shall be based on licensed capacity; however, the center shall ensure that the

following requirements are met regardless of the licensed capacity of the center.

1. The RN or LPN shall be on the premises daily for at least 8 hours, the number of hours the center is open, or during the time participants are present at the center, whichever is less.

2. If the RN or LPN has been on duty at least 8 hours and there are still participants present in the ADHC, the RN or LPN may be relieved of duty, however, at least one key staff person shall remain on duty at the center. The key staff person shall be the social service designee/social worker or the program manager.

3. A staff member who is certified in CPR must be on the premises at all times while clients are present.

E. Centers with a licensed capacity of 15 or fewer clients may designate one full-time staff person or full-time equivalent person to fill up to three "key staff" positions, and must employ at least one full-time person or full-time equivalent to fulfill key staff requirements.

F. Centers with a licensed capacity to serve 16-30 clients must employ at least two full-time persons or full-time equivalents to fulfill key staff requirements, and may designate one full-time staff person or full-time equivalent person to fill up to, but no more than, two "key staff" positions.

G. Centers with a licensed capacity to serve more than 30 clients must employ at least three full-time persons or full-time equivalents to fill key staff positions. Each key staff position must be filled with a full-time person or full-time equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008), repromulgated LR 34:2634 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#053

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

CommunityCARE Program—Program Redesign
(LAC 50:I.2901-2907, 2911-2913, 2917 and 2919)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:I.2901-2907, 2911-2913 and adopts 2917 and 2919 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S.

49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing primary care provider referrals and authorization in order to exempt urgent care facilities and retail convenience clinics from that requirement (*Louisiana Register*, Volume 36, Number 7). The final Rule was published January 20, 2011 (*Louisiana Register*, Volume 37, Number 1). The department promulgated an Emergency Rule in order to redesign the CommunityCARE Program by amending the provisions governing recipient participation, provider selection, provider qualifications, referrals and authorizations and primary care provider reimbursement (*Louisiana Register*, Volume 37, Number 1). In addition, the department implemented a pay-for-performance incentive payment methodology and a quality committee. The department promulgated an Emergency Rule which amended the provisions of the January 1, 2011 Emergency Rule in order to clarify these provisions, and revised the formatting of LAC 50:I.2911 as a result of the promulgation of the January 20, 2011 final Rule governing the CommunityCARE Program (*Louisiana Register*, Volume 37, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2011 Emergency Rule. This action is being taken in order to avoid a budget deficit in the medical assistance programs and to improve recipient access to quality care by requiring greater provider accountability.

Effective April 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the CommunityCARE Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Medicaid Coordinated Care

Chapter 29. CommunityCARE 2.0

§2901. Introduction

A. - B. ...

C. Effective January 1, 2011, the CommunityCARE Program shall hereafter be referred to as CommunityCARE 2.0 to illustrate the program redesign being implemented by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003), amended LR 32:404 (March 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2903. Recipient Participation

A. The following groups of Medicaid recipients are mandatory enrollees in the CommunityCARE 2.0 Program:

1. TANF and TANF-related recipients;
2. SSI and SSI-related, non-Medicare, recipients who are age 19 up to age 65; and
3. CHIP recipients.

B. Effective January 1, 2011, or as soon as federal statutes allow enrollment, the following groups of Medicaid recipients may voluntarily enroll to participate in the CommunityCARE 2.0 Program:

1. recipients who are under age 19 and are in foster care, other out-of-home placement or receiving adoption assistance;

2. recipients who are under age 19 and are eligible for SSI under Title XVI or an SSI-related group;

3. recipients who are under age 19 and are eligible through a Home and Community-Based Services Waiver; and

4. recipients receiving services through a family-centered, community-based, coordinated care system that receives grant funds under Section 501(a)(1)(D) of Title V, and is defined by the state in terms of either program participation or special health care needs.

5. - 14.c. Repealed.

C. The following groups of recipients are excluded from participation in the CommunityCARE 2.0 Program. Individuals who:

1. are residents of:

- a. nursing facilities;
- b. intermediate care facilities for persons with developmental disabilities; and
- c. psychiatric facilities;

2. are age 65 or older;

3. are dual eligibles (Medicare Part A or Part B coverage or both);

4. are refugees;

5. have other primary health insurance that covers physician benefits, including health management organizations (HMOs);

6. are receiving Hospice;

7. have eligibility less than three months or retroactive only eligibility;

8. are eligible through pregnant woman eligibility categories;

9. are eligible through CHIP Phase IV unborn option;

10. are participants in the All Inclusive Care for the Elderly (PACE) Program;

11. are under age 19 and eligible through the CHIP Affordable Plan;

12. are eligible through the Take Charge Family Planning Waiver;

13. are in the Medicaid physician/pharmacy lock-in program (pharmacy only lock-in recipients are not exempt from participation); or

14. are Native Americans who are members of federally recognized tribes.

D. Requests for medical exemptions shall be reviewed for approval on a case-by-case basis for certain medically high risk recipients that may warrant the direct care and supervision of a non-primary care specialist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:908 (June 2003), amended LR 32:404 (March 2006), amended LR 32:1901 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2905. Provider Selection

A. Recipients have the opportunity to select a participating physician, physician group, nurse practitioner, federally qualified health center (FQHC), or rural health

clinic (RHC) located in their parish of residence or in a contiguous parish to be their primary care provider.

1. Exceptions to the PCP location requirement may be considered on a case-by-case basis based on medical need (e.g. special needs populations).

2. Recipients who do not select a PCP are automatically assigned to a participating provider.

3. The PCP shall provide basic primary care, referral and after-hours coverage services for each linked recipient. The fact that each recipient has a PCP allows continuity of care focused on the PCP as a care manager.

B. Mandatory CommunityCARE 2.0 enrollees that fail to select a PCP and voluntary enrollees that do not exercise their option not to participate in the CommunityCARE 2.0 Program within the timeframes specified by the department, shall be automatically assigned to a PCP in accordance with the department's algorithm/formula.

1. - 4.c. Repealed.

C. CommunityCARE 2.0 recipients may request to change primary care providers for cause at any time. Circumstances that are considered cause for changing PCPs at any time include, but are not limited to the following:

1. the recipient moves out of the PCP's service area;
2. because of moral or religious objections, the PCP does not cover the service that the recipient seeks; or
3. lack of access to services or providers with experience in dealing with the recipient's health care needs.

D. Recipients may change primary care providers without cause at any time during the first 90 days of enrollment with a primary care provider and at least every 12 months thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and §1915(b)(1) of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 17:788 (August 1991), amended LR 19:645 (May 1993), LR 27:547 (April 2001), repromulgated LR 29:909 (June 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2907. Provider Qualifications

A. In order to participate in the program and qualify for the monthly PMPM base reimbursement, a primary care provider must:

1. meet all of the general Medicaid enrollment conditions;
2. be an enrolled Medicaid provider in good standing;
3. meet the CommunityCARE 2.0 participation standards; and
4. sign an attestation which documents agreement to comply with program requirements.

a. CommunityCARE PCPs must submit the required attestation within the timeframe specified by the department in order to transition to participation in the CommunityCARE 2.0 Program.

b. Transitioning PCPs that fail to submit the attestation will be terminated from the CommunityCARE 2.0 Program and enrollees shall be given the choice of other participating providers as soon as systematically possible.

5. - 7. Repealed.

B. In addition, the following requirements must be met for participation.

1. A full-time equivalent (FTE) PCP must provide direct medical care a minimum of 20 hours per week at a single location.

a. During the program transition to CommunityCARE 2.0 and to afford an opportunity and time for the PCP to meet the requirement for providing a minimum of 20 hours per week of direct medical care, the PCP must attest their intent to implement this requirement by January 31, 2011 and these hours must be in place by March 31, 2011 in order for the monthly payment to be made. The base management fee will only be paid after this period if these hours have been verified.

b. If the PCP does not provide the required 20 hours of direct medical care per week as of March 31, 2011, the PCP shall be deemed in non-compliance with the participation requirements and shall be disenrolled from CommunityCARE 2.0 and all linkages will be terminated.

2. PCPs with less than 100 linkages may participate in the program, but will receive base management fee only and are not eligible to participate in the pay-for performance (P4P) pool.

a. new PCPs who have not previously participated in CommunityCARE shall be exempt from this requirement for the first 12 months of their entry into the CommunityCARE 2.0 Program;

3. PCPs or practices with linkages of 5,000 or more must have extended office hours of at least six hours per week for scheduling routine, non-urgent and urgent appointments. Extended office hours shall include those services rendered between the hours of 5 p.m. and 8 a.m. Monday through Friday, on weekends and state legal holidays. The extended hours requirement may be met on weekdays, weekends or through a combination of both. Documentation relative to the services provided during extended hours must include the time that the services were rendered.

4. The PCP must provide an e-mail address and maintain Internet access in order to conduct administrative transactions electronically with the department.

5. The PCP must participate in the Louisiana Immunization Network for Kids Statewide (LINKS). During the program transition to CommunityCARE 2.0 and to afford an opportunity and time for the PCP to participate in the LINKS, the PCP must attest their intent to comply with this requirement by January 31, 2011. Installation and participation must be in place by March 31, 2011 in order for the monthly payment to be made.

a. LINKS participation is required for all CommunityCARE 2.0 PCPs regardless of provider specialty or age group of enrollees linked to the practice.

C. The following individual practitioners and clinics may participate as PCPs:

1. general practitioners;
2. family practitioners;
3. pediatricians;
4. gynecologists;
5. internists;
6. obstetricians;
7. federally qualified health centers;
8. rural health clinics; and

9. nurse practitioners.

D. Other physician specialists who meet the program standards for participation may be approved by the department to be PCPs under certain circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003), amended LR 32:32:405 (March 2006); amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2911. PCP Referral/Authorization

A. - A.20. ...

21. dentures for adults;

22. services provided by urgent care facilities and retail convenience clinics;

a. These providers furnish walk-in, non-routine care as an alternative to emergency department care when access to primary care services is not readily available to meet the health needs of the recipient.

b. Urgent care facilities and retail convenience clinics must provide medical record notes of the visit to the recipient's PCP within 48 hours of the visit; and

23. effective for dates of service on or after January 1, 2011, services provided by federally qualified health centers (FQHCs).

a. These providers furnish walk-in, non-routine care as an alternative to emergency department care when access to primary care services is not readily available to meet the health needs of the recipient.

b. FQHCs must provide medical record notes of the visit to the recipient's PCP within 48 hours of the visit.

c. Failure to provide the medical records to the PCP within the specified timeframe will result in assessment of a penalty of \$200 per occurrence to the FQHC.

B. - B.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:909 (June 2003), amended LR 32:405 (March 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:338 (January 2011), amended LR 38:

§2913. Primary Care Provider Reimbursement

A. The management fee paid to primary care providers in the CommunityCARE Program is \$3 per enrolled recipient per month.

B. Effective for dates of service on or after August 1, 2010, primary care providers enrolled in the CommunityCARE Program shall be reimbursed at the established fees on file for professional services covered in the Professional Services Program.

C. Effective January 1, 2011, the base care management fee paid to CommunityCARE 2.0 primary care providers shall be reduced to \$1.50 per member per month to the following recipient groups:

1. TANF and TANF-related recipients; and

2. SSI and SSI-related, non-Medicare, recipients who are age 19 up to age 65; and

3. CHIP recipients.

D. Effective January 1, 2011, or as soon as federal statutes allow enrollment, a base management fee of \$1.50

per month will be paid to CommunityCARE 2.0 primary care providers per linkage to Native American recipients who are members of a federally recognized tribe.

E. Effective January 1, 2011, or as soon as federal statutes allow enrollment, the base management fee of \$3 per month will be paid to CommunityCARE 2.0 primary care providers per linkage to the following recipients:

1. recipients who are in foster care, other out-of-home placement, or receiving adoption assistance;

2. SSI and SSI-related recipients under age 19; and

3. recipients who are receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501(a)(1)(D) of Title V, and is defined by the state in terms of either program participation or special health care needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, 29:910 (June 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2917. Pay-for-Performance Incentives

A. Effective January 1, 2011, or as soon as federal statutes allow enrollment, a pay-for-performance payment shall be reimbursed to PCPs for linkages to recipients in the following eligibility groups as an incentive to enhance quality of care and promote provider accountability:

1. TANF and TANF related recipients;

2. SSI and SSI-related, non-Medicare, recipients who are age 19 up to age 65;

3. CHIP recipients;

4. recipients who are under the age of 19 and are:

a. in foster care, other out-of-home placement, or receiving adoption assistance; or

b. eligible through SSI or SSI-related eligibility categories;

5. recipients receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501(a)(1)(D) of Title V, and is defined by the state in terms of either program participation or special health care needs; and

6. recipients who are eligible through Home and Community-Based Services Waivers.

B. Pay-for-Performance Measures and Reimbursement

1. P4P payments will be based on a pre-determined PMPM in accordance with PCP compliance with the following performance measures and shall be reimbursed on a quarterly basis. The PCP must attest to meeting certain performance standards and the department will monitor the PCPs for program compliance.

a. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Screenings. A payment of \$0.25 PMPM for recipients under the age of 21 will be made if all screenings are performed in the PCP's office.

b. National Committee for Quality Assurance (NCQA) Patient-Centered Medical Home Level 1 Recognition or Joint Commission on Accreditation of Healthcare Organizations (JCAHO) Primary Care Home Accreditation. A payment of \$0.50 PMPM will be made if the PCP provides verification of NCQA patient centered medical home Level 1 or higher status recognition, or JCAHO primary care home accreditation.

i. During the program transition to CommunityCARE 2.0 and to afford an opportunity and time for PCPs to attain NCQA recognition or JCAHO accreditation, this payment will be made for the first three quarters based on attestation and documentation that the PCP is pursuing NCQA recognition or JCAHO accreditation.

ii. Effective for the quarter beginning October 1, 2011, payment will be contingent on the PCP providing verification of NCQA recognition or JCAHO accreditation no later than the last month of the quarter.

c. Extended Office Hours. A quarterly payment of \$0.75 PMPM will be made if the PCP meets the extended office hours requirement and provides scheduling for routine, non-urgent and urgent appointments during these hours.

i. The extended office hours must be at a minimum:

(a). six hours per week if the PCP has over 5,000 linkages;

(b). four hours per week if the PCP has from 2,000 to 5,000 linkages; and

(c). 2 hours per week if the PCP has less than 2,000 linkages.

ii. PCPs must attest to their intent to implement extended office hours by January 31, 2011.

iii. Extended office hours must be in place by March 31, 2011 in order for the first quarterly payment to be made. Payment for the second quarter will only be paid if extended office hours are verified.

d. Emergency Room Utilization. A quarterly payment will be implemented as an incentive to decrease inappropriate utilization and the need for emergency room (ER) services by CommunityCARE 2.0 recipients. Compliance will be measured through claims data.

i. A payment of \$0.75 PMPM will be made if ER utilization by linked recipients is in the lowest quartile (at or below the twenty-fifth percentile) for utilization of ER levels 1 and 2 for the reporting quarter.

ii. A payment of \$0.50 PMPM will be made if ER utilization by linked recipients is in the second lowest quartile (at or below the twenty-sixth to fiftieth percentile) for utilization of ER levels 1 and 2 for the reporting quarter.

iii. A payment of \$0.25 PMPM will be made if ER utilization by linked recipients is in the third lowest quartile (at or below the fifty-first to seventy-fifth percentile) for utilization of ER levels 1 and 2 for the reporting quarter. For the first six months of the program, a PCP ranking in the third lowest quartile will be eligible for payment. After six months in the third lowest quartile, the PCP will not qualify for a payment.

C. Pay-for Performance Incentive Pool

1. Funds shall be set aside for disbursement of P4P payments to participating PCPs who meet the participation requirements and performance measures set forth in this Chapter.

2. The P4P payments will be on a per member per month (PMPM) basis and will be reimbursed to qualified PCPs on a quarterly basis (the month following the end of the performance measurement quarter).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§2919. CommunityCARE 2.0 Quality Committee

A. A quality committee will be established by the department to advise the secretary concerning health care quality, on-going quality improvement opportunities and recommendations for changes in the distribution of the pay-for-performance pool.

B. The committee shall consist of 15 members appointed by the secretary and will include representatives of stakeholders and providers as well as departmental staff. The committee shall be chaired by the Medicaid medical director and staffed by the department.

C. The CommunityCARE 2.0 Quality Committee shall meet, at a minimum, the first month of each quarter and as deemed necessary by the secretary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#054

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Direct Service Worker Registry
(LAC 48:I.Chapter 92)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.Chapter 92 as authorized by R.S. 40:2179-2179.1. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with the directives of Act 306 of the 2005 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the establishment and maintenance of the Direct Service Worker (DSW) Registry and defined the qualifications and requirements for direct service workers (*Louisiana Register*, Volume 32, Number 11). The November 20, 2006 Rule was amended to further clarify the provisions governing the DSW registry (*Louisiana Register*, Volume 33, Number 1). The department amended the provisions governing the training curriculum for direct service workers to require that licensed providers and other state approved training entities that wish to conduct training for direct service workers, and do not have an approved training curriculum, must use the department-approved training curriculum (*Louisiana Register*, Volume 35, Volume 11).

House Concurrent Resolution (HCR) 94 of the 2010 Regular Session of the Louisiana Legislature suspended LAC.48.I.9201-9203 and directed the department to adopt new provisions governing the DSW Registry which will eliminate duplicative regulations and streamline the DSW process. In compliance with the directives of HCR 94, the department promulgated an Emergency Rule which amended the provisions governing the DSW Registry in order to create a more manageable and efficient DSW process (*Louisiana Registry*, Volume 37, Number 4). This Emergency Rule is being promulgated to continue the provisions of the April 20, 2010 Emergency Rule. This action is being taken to protect the health and well-being of Louisiana citizens who receive care from direct service workers, and to eliminate the risks associated with services rendered by direct service workers who have committed substantiated acts of abuse, neglect, or exploitation.

Effective April 17, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Direct Service Workers Registry.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Health Standards

Chapter 92. Direct Service Worker

Registry Subchapter A. General Provisions

§9201. Definitions

* * *

Employer—an individual or entity that pays an individual wages or a salary for performing a job.

* * *

Finding—allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department following a decision by an administrative law judge or a court of law after all appeal delays afforded by law or allegations of abuse, neglect, exploitation or extortion that are placed on the registry by the department as a result of failure to timely request an appeal in accordance with this rule.

* * *

Provider—an entity that furnishes care and services to consumers and has been licensed by the Department of Health and Hospitals to operate in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2058 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9202. Introduction

A. The Department of Health and Hospitals (DHH) shall maintain a registry of individuals for whom specific findings of abuse, neglect, exploitation or extortion have been substantiated by the department, an administrative law judge or a court of law.

B. The Direct Service Worker Registry will contain the following items on each individual for whom a finding has been placed:

1. name;
 - a. - i.v. Repealed.
2. address;
3. Social Security number;

4. telephone number;
5. state registration number;
6. an accurate summary of finding(s); and
7. information relative to registry status which will be available through procedures established by the Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section (HSS).

C. Employers must use the registry to determine if there is a finding that a prospective hire has abused or neglected an individual being supported, or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:95 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter B. Training and Competency Requirements

§9211. General Provisions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:96 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9213. Trainee Responsibilities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2059 (November 2006), amended LR 33:96 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9215. Training Curriculum

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:96 (January 2007), LR 35:2437 (November 2009), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9217. Training Coordinators

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9219. Competency Evaluation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR

33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9221. Compliance with Training and Competency Evaluation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2060 (November 2006), amended LR 33:97 (January 2007), repealed by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter C. Provider Participation

§9231. Provider Responsibilities

A. Prior to hiring any direct service worker or trainee, a licensed provider shall:

1. assure that the individual is at least 18 years of age, and that they have the ability to read, write and carry out directions competently as assigned; and

2. access the registry to determine if there is a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds. If there is such a finding on the registry, the prospective employee shall not be hired.

B. The provider shall check the registry every six months to determine if any currently employed direct service worker or trainee has been placed on the registry with a finding that he/she has abused or neglected an individual being supported or misappropriated the individual's property or funds.

1. The provider shall maintain printed confirmation from the registry web site as verification of compliance with this procedure.

C. - E.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:97 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter E. Violations

§9271. Disqualification of Training Programs

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9273. Allegations of Direct Service Worker Wrong-Doing

A. The Department, through the Division of Administrative Law, or its successor, has provided for a process of the review and investigation of all allegations of wrong-doing by direct service workers. Direct service workers and trainees must not:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2061 (November 2006), amended LR

33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter F. Administrative Hearings

§9285. General Provisions

A. ...

1. The request for an administrative hearing must be made in writing to the Division of Administrative Law, or its successor.

2. ...

3. Unless a timely and proper request is received by the Division of Administrative Law or its successor, the findings of the department shall be considered a final and binding administrative determination.

a. ...

B. When an administrative hearing is scheduled, the Division of Administrative Law, or its successor, shall notify the direct service worker, his/her representative and the agency representative in writing.

1. - 1.c. ...

C. The administrative hearing shall be conducted by an administrative law judge from the Division of Administrative Law, or its successor, as authorized by R.S. 46:107 and according to the following procedures.

1. - 8. ...

9. When the allegation(s) supporting placement of a finding is substantiated, the direct service worker may not rest on the mere denial in his/her testimony and/or pleading(s) but must set forth specific facts and produce evidence to disprove or contest the allegation(s).

D. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:98 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9287. Preliminary Conferences

A. - A.6. ...

B. When the Division of Administrative Law, or its successor, schedules a preliminary conference, all parties shall be notified in writing. The notice shall direct any parties and their attorneys to appear on a specific date and at a specific time and place.

C. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2062 (November 2006), amended LR 33:99 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9293. Failure to Appear at Administrative Hearings

A. If a direct service worker fails to appear at an administrative hearing, a notice/letter of abandonment may be issued by the Division of Administrative Law, or its successor, dismissing the appeal. A copy of the notice shall be mailed to each party.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2179-2179.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:2063 (November 2006), amended LR

33:100 (January 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#055

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment School-Based Nursing Services (LAC 50:XV.Chapter 95)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.Chapter 95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides Medicaid coverage for health care services rendered to children and youth under the age of 21 through the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. The department promulgated an Emergency Rule which amended the provisions governing the EPSDT Program in order to adopt provisions to establish reimbursement and coverage for school-based nursing services rendered to all children enrolled in Louisiana schools (*Louisiana Register*, Volume 37, Number 12). The department now proposes to amend the January 1, 2012 Emergency Rule to clarify the provisions governing EPSDT school-based nursing services. This action is being taken to promote the health and welfare of Medicaid eligible recipients and to assure a more efficient and effective delivery of health care services.

Effective March 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the January 1, 2012 Emergency Rule which established Medicaid coverage and reimbursement of school-based nursing services covered under the Early and Periodic Screening, Diagnosis and Treatment Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 95. School-Based Nursing Services

§9501. General Provisions

A. EPSDT school-based nursing services are provided by a registered nurse (RN) within a local education agency (LEA). The goal of these services is to prevent or mitigate disease, enhance care coordination, and reduce costs by

preventing the need for tertiary care. Providing these services in the school increases access to health care for children and youth resulting in a more efficient and effective delivery of care.

B. RNs providing school-based nursing services are required to maintain an active RN license with the state of Louisiana and comply with the Louisiana Nurse Practice Act.

C. School-based nursing services shall be covered for all recipients in the school system and not limited to those with an Individualized Education Program (IEP).

D. School boards and staff shall collaborate for all services with the Medicaid recipient's Bayou Health plan and shall ensure compliance with established protocols. In a fee-for-service situation, for the non-Bayou Health individuals, staff will make necessary referrals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9503. Covered Services

A. The following school-based nursing services shall be covered:

1. Episodic Care. This is unplanned care that occurs when children see the nurse for assessment of a health concern. Episodic care includes but is not limited to:

- a. nose bleeds;
- b. cuts;
- c. bruises; or
- d. flu symptoms.

2. Chronic Medical Condition Management and Care Coordination. This is care based on one of the following criteria.

a. The child has a chronic medical condition or disability requiring implementation of a health plan/protocol (examples would be children with asthma, diabetes, or cerebral palsy). There must be a written health care plan based on a health assessment performed by the RN. The date of the completion of the plan and the name of the person completing the plan must be included in the written plan. Each health care service required and the schedule for its provision must be described in the plan.

b. Medication Administration. This service is scheduled as part of a health care plan developed by either the treating physician or the school district LEA. Administration of medication will be at the direction of the physician and within the license of the RN and must be approved within the district LEA policies.

c. Implementation of Physician's Orders. These services shall be provided as a result of receipt of a written plan of care from the child's physician/Bayou Health provider or an IEP/Health care plan for students with disabilities.

3. Immunization Assessments. These services are nursing assessments of health status (immunizations) required by the Office of Public Health. This service requires an RN to assess the vaccination status of children in these cohorts once each year. This assessment is limited to the following children:

- a. children enrolling in a school for the first time;
- b. pre-kindergarten children;
- c. kindergarten children; and
- d. children entering sixth grade; or

e. any student 11 years of age regardless of grade.

4. EPSDT Program Periodicity Schedule for Screenings. A nurse employed by a school district may perform any of these screens within their licensure for Bayou Health members as authorized by the Bayou Health plan or as compliant with fee-for-service for non-Bayou Health individuals. The results of these screens must be made available to the Bayou Health provider as part of the care coordination plan of the district. The screens shall be performed according to the periodicity schedule including any inter-periodic screens.

a. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9505. Reimbursement Methodology

A. Payment for EPSDT school-based nursing services shall be based on the most recent school year's actual cost as determined by desk review and/or audit for each LEA provider.

1. Each LEA shall determine cost annually by using DHH's cost report for nursing service cost form based on the direct services cost report.

2. Direct cost shall be limited to the amount of total compensation (salaries, vendor payments and fringe benefits) of current nursing service providers as allocated to nursing services for Medicaid special education recipients. The direct cost related to the electronic health record shall be added to the compensation costs to arrive at the total direct costs for nursing services. There are no additional direct costs included in the rate.

3. Indirect cost shall be derived by multiplying the cognizant agency indirect cost unrestricted rate assigned by the Department of Education to each LEA. There are no additional indirect costs included.

4. To determine the amount of nursing services cost that may be attributed to Medicaid; the ratio of total Medicaid students in the LEA to all students in the LEA is multiplied by total direct cost. Cost data is subject to certification by each LEA. This serves as the basis for obtaining federal Medicaid funding.

B. For the nursing services, the participating LEAs' actual cost of providing the services shall be claimed for Medicaid federal financial participation (FFP) based on the following methodology.

1. The state shall gather actual expenditure information for each LEA through its payroll/benefits and accounts payable system.

2. Develop Direct Cost—The Payroll Cost Base. Total annual salaries and benefits paid, as well as contracted (vendor) payments, shall be obtained initially from each LEA's payroll/benefits and accounts payable system. This data shall be reported on DHH's Nursing Services Cost Report form for all nursing service personnel (i.e. all personnel providing LEA nursing treatment services covered under the state plan).

3. Adjust the Payroll Cost Base. The payroll cost base shall be reduced for amounts reimbursed by other funding sources (e.g. Federal grants). The payroll cost base shall not

include any amounts for staff whose compensation is 100 percent reimbursed by a funding source other than state/local funds. This application results in total adjusted salary cost.

4. Determine the Percentage of Time to Provide All Nursing Services. A time study which incorporates the CMS-approved Medicaid Administrative Claiming (MAC) methodology for nursing service personnel shall be used to determine the percentage of time nursing service personnel spend on nursing services and General and Administrative (G and A) time. This time study will assure that there is no duplicate claiming. The G and A percentage shall be reallocated in a manner consistent with the CMS approved Medicaid Administrative Claiming methodology. Total G&A time shall be allocated to all other activity codes based on the percentage of time spent on each respective activity. To reallocate G and A time to nursing services, the percentage of time spent on nursing services shall be divided by 100 percent minus the percentage of G and A time. This shall result in a percentage that represents the nursing services with appropriate allocation of G and A. This percentage shall be multiplied by total adjusted salary cost as determined in Paragraph B.4 above to allocate cost to school based services. The product represents total direct cost.

a. A sufficient number of nursing service personnel shall be sampled to ensure results that will have a confidence level of at least 95 percent with a precision of plus or minus five percent overall.

5. Determine Indirect Cost. Indirect cost shall be determined by multiplying each LEA's indirect unrestricted rate assigned by the cognizant agency (the Department of Education) by total adjusted direct cost as determined under Paragraph B.3 above. No additional indirect cost shall be recognized outside of the cognizant agency indirect rate. The sum of direct cost and indirect cost shall be the total direct service cost for all students receiving nursing services.

6. Allocate Direct Service Cost to Medicaid. To determine the amount of cost that may be attributed to Medicaid, total cost as determined under Paragraph B.5 above shall be multiplied by the ratio of Medicaid students in the LEA to all students in the LEA. This results in total cost that may be certified as Medicaid's portion of school-based nursing services cost.

C. Reconciliation of LEA Certified Costs and Medicaid Management Information System (MMIS) Paid Claims. Each LEA shall complete the nursing services cost report and submit the cost report(s) no later than five months after the fiscal year period ends (June 30), and reconciliation shall be completed within 12 months from the fiscal year end. All filed nursing services cost reports shall be subject to desk review by the department's audit contractor. The department shall reconcile the total expenditures (both state and federal share) for each LEA's nursing services. The Medicaid certified cost expenditures from the nursing services cost report(s) will be reconciled against the MMIS paid claims data and the department shall issue a notice of final settlement pending audit that denotes the amount due to or from the LEA. This reconciliation is inclusive of all nursing services provided by the LEA.

D. Cost Settlement Process. As part of its financial oversight responsibilities, the department shall develop audit

and review procedures to audit and process final settlements for certain LEAs. The audit plan shall include a risk assessment of the LEAs using available paid claims data to determine the appropriate level of oversight.

1. The financial oversight of all LEAs shall include reviewing the costs reported on the nursing services cost reports against the allowable costs, performing desk reviews and conducting limited reviews.

2. The department will make every effort to audit each LEA at least every four years. These activities shall be performed to ensure that audit and final settlement occurs no later than two years from the LEA's fiscal year end for the cost reporting period audited. LEAs may appeal audit findings in accordance with DHH appeal procedures.

3. The department shall adjust the affected LEA's payments no less than annually, when any reconciliation or final settlement results in significant underpayments or overpayments to any LEA. By performing the reconciliation and final settlement process, there shall be no instances where total Medicaid payments for services exceed 100 percent of actual, certified expenditures for providing LEA services for each LEA.

4. If the interim payments exceed the actual, certified costs of an LEA's Medicaid services, the department shall recoup the overpayment in one of the following methods:

a. offset all future claim payments from the affected LEA until the amount of the overpayment is recovered;

b. recoup an agreed upon percentage from future claims payments to the LEA to ensure recovery of the overpayment within one year; or

c. recoup an agreed upon dollar amount from future claims payments to the LEA to ensure recovery of the overpayment within one year.

5. If the actual certified costs of an LEA's Medicaid services exceed interim Medicaid payments, the department will pay this difference to the LEA in accordance with the final actual certification agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#047

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Early and Periodic Screening, Diagnosis and Treatment
Substance Abuse Services (LAC 50:XV.Chapter 93)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 93 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing terminated coverage and reimbursement of substance abuse clinic services under the Medicaid Program as a result of a budgetary shortfall (*Louisiana Register*, Volume 27, Number 1). However, in compliance with federal regulations governing coverage of discretionary services under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program, substance abuse services continued to be available to Medicaid recipients up to the age of 21 through the substance abuse clinics operated or funded by the Office for Addictive Disorders (OAD), now the Office of Behavioral Health (OBH).

The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted the provisions governing the coverage and reimbursement of substance abuse services rendered to EPSDT recipients (*Louisiana Register*, Volume 37, Number 5). This Emergency Rule is being promulgated to continue the provisions of the April 22, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid eligible recipients, up to the age 21, who are in need of substance abuse services, and to assure continued access to services.

Effective April 19, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing adopts the provisions governing Medicaid coverage of substance abuse services covered under the Early and Periodic Screening, Diagnosis and Treatment Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 93. Substance Abuse Services

§9301. General Provisions

A. The Medicaid Program shall provide coverage of substance abuse services rendered to Medicaid eligible recipients, under the age of 21.

B. Medicaid reimbursement for medically necessary substance abuse services shall only be provided to the Office of Behavioral Health for recipients under the age of 21.

C. Substance abuse services covered under the EPSDT Program shall include medically necessary clinic services and other medically necessary substance abuse services rendered to EPSDT recipients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§9303. Reimbursement Methodology

A. The Medicaid Program shall provide reimbursement to the Office of Behavioral Health for substance abuse services rendered to EPSDT recipients.

B. Reimbursement for these services shall be based on the most recent actual cost to OBH. Cost data shall be derived from the department's ISIS reporting of costs for the period. The cost period shall be consistent with the state fiscal year. Costs are determined by selecting the expenditures paid from state and local funds for the state fiscal year.

C. OBH encounter data from their database shall be used to identify allowable services. Encounter data for recipients under the age of 21 shall be extracted and used in calculations to determine actual cost to OBH.

D. Costs shall be calculated by using the cost-weighted amount and include Medicaid eligibles under 21 database costs divided by total database costs times OBH's expenditures for the program which were derived from the state's ISIS data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#056

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Facility Need Review—Hospice Providers
(LAC 48:I.12503, 12505 and 12526)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.12503 and §12505 and to adopt §12526 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2116. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the

maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the inclusion of adult day health care providers in the Facility Need Review (FNR) Program (*Louisiana Register*, Volume 36, Number 2). The department now proposes to amend the provisions governing the facility need review process to adopt provisions governing the inclusion of licensed hospice providers and inpatient hospice providers in the FNR Program.

This action is being taken to avoid sanctions or penalties from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for noncompliance with The Patient Protection and Affordable Care Act requirements for pediatric hospice service provisions. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2011-2012.

Effective March 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the facility need review process to adopt provisions governing the inclusion of licensed hospice providers and inpatient hospice providers.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12503. General Information

A. - C.1. ...

2. home and community-based service providers, as defined under this Chapter;

3. adult day health care providers; and

4. hospice providers or inpatient hospice facilities.

D. - F.4. ...

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ICFs-DD, ADHC and hospice providers that meet one of the following conditions:

1. ...

2. existing licensed ICFs-DD that are converting to the proposed Residential Options Waiver;

3. ADHC providers who were licensed as of December 31, 2009 or who had a completed initial licensing application submitted to the department by December 31, 2009, or who are enrolled or will enroll in the Louisiana Medicaid Program solely as a program for all-inclusive care for the elderly provider; or

4. hospice providers that were licensed, or had a completed initial licensing application submitted to the department, by March 20, 2012.

H. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008),

amended LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:

§12505. Application and Review Process

A. FNR applications shall be submitted to the Bureau of Health Services Financing, Health Standards Section, Facility Need Review Program. The application shall be submitted on the forms (on 8.5 inch by 11 inch paper) provided for that purpose, contain such information as the department may require and be accompanied by a nonrefundable fee of \$200. An original and three copies of the application are required for submission.

A.1. - B.3.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:812 (August 1995), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2438 (November 2009), LR 36:323 (February 2010), LR 38:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12526. Hospice Providers

A. No hospice provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of a hospice provider license. Once the FNR Program approval is granted, a hospice provider is eligible to be licensed by the department, subject to meeting all of the requirements for licensure.

B. The service area for proposed or existing hospice providers is within a 50 mile radius of the proposed geographic location where the provider is or will be licensed.

C. Determination of Need/Approval

1. The department will review the application to determine if there is a need for an additional hospice provider within a 50 mile radius of the proposed geographic location for which the application is submitted.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application and other evidence effectively establishes the probability of serious, adverse consequences to the recipients' ability to access hospice care if the provider is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

a. the number of other hospice providers within a 50 mile radius of the proposed geographic location servicing the same population; and

b. allegations involving issues of access to hospice care and services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access hospice care if the provider is not allowed to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

D. Applications for approvals of licensed providers submitted under these provisions are bound to the description in the application with regard to the type of services proposed as well as to the site and location as defined in the application. FNR approval of licensed

providers shall expire if these aspects of the application are altered or changed.

E. FNR approvals for licensed providers are non-transferrable and are limited to the location and the name of the original licensee.

1. A hospice provider undergoing a change of location within a 50 mile radius of the licensed geographic location shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. A hospice provider undergoing a change of location outside of the 50 mile radius of the licensed geographic location shall submit a new FNR application and fee and undergo the FNR approval process.

2. A hospice provider undergoing a change of ownership shall submit a new FNR application to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which must show the seller's or transferor's intent to relinquish the FNR approval.

3. FNR Approval of a licensed provider shall automatically expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#048

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Home and Community-Based Services Waivers
Support Coordination Standards for Participation
(LAC 50:XXI.Chapter 5)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopts LAC 50:XXI.Chapter 5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services (OAAS) provide Medicaid coverage for support coordination services rendered to waiver participants who receive services in home and community-based waiver programs administered by OAAS. The department

promulgated an Emergency Rule which adopted provisions to establish Standards for Participation for support coordination agencies that provide support coordination services to participants in OAAS-administered waiver programs (*Louisiana Register*, Volume 37, Number 12). This Emergency Rule is being promulgated to continue the provisions of the December 20, 2011 Emergency Rule.

This action is being taken to promote the health and welfare of waiver participants and to ensure that these services are rendered in an efficient and cost-effective manner.

Effective April 19, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopt provisions to establish Standards for Participation for support coordination agencies that provide services to participants in waiver programs administered by the Office of Aging and Adult Services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 1. General Provisions

Chapter 5. Support Coordination Standards for Participation for Office of Aging and Adult Services Waiver

Programs Subchapter A. General Provisions

§501. Introduction

A. The Department of Health and Hospitals (DHH) establishes these minimum Standards for Participation which provides the core requirements for support coordination services provided under home and community-based waiver programs administered by the Office of Aging and Adult Services (OAAS). OAAS must determine the adequacy of quality and protection of waiver participants in accordance with the provisions of these standards.

B. OAAS, or its designee, is responsible for setting the standards for support coordination, monitoring the provisions of this Rule, and applying administrative sanctions for failures by support coordinators to meet the minimum Standards for Participation in serving participants of OAAS-administered waiver programs.

C. Support coordination are services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing, and other services, regardless of the funding source for these services.

D. Upon promulgation of the final Rule governing these Standards for Participation, existing support coordination providers of OAAS-administered waiver programs shall be required to meet the requirements of this Chapter as soon as possible and no later than six months from the promulgation of this Rule.

E. If, in the judgment of OAAS, application of the requirements stated in these standards would be impractical in a specified case; such requirements may be modified by the OAAS Assistant Secretary to allow alternative arrangements that will secure as nearly equivalent provision of services as is practical. In no case will the modification afford less quality or protection, in the judgment of OAAS,

than that which would be provided with compliance of the provisions contained in these standards.

1. Requirement modifications may be reviewed by the OAAS Assistant Secretary and either continued or cancelled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 38:

§503. Certification Requirements

A. All agencies that provide support coordination to OAAS-administered home and community-based waivers must be certified by the Department of Health and Hospitals. It shall be unlawful to operate as a Support Coordination agency for OAAS-administered waivers without being certified by the department.

B. In order to provide support coordination services for OAAS-administered home and community-based waiver programs, the agency must:

1. be certified and meet the Standards for Participation requirements as set forth in this Rule;
2. sign a performance agreement with OAAS;
3. assure staff attends all training mandated by OAAS;
4. enroll as a Medicaid support coordination agency in all regions in which it intends to provide services for OAAS-administered home and community-based services; and
5. comply with all DHH and OAAS policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§505. Certification Issuance

A. A certification shall:

1. be issued only to the entity named in the certification application;
2. be valid only for the support coordination agency to which it is issued after all applicable requirements are met;
3. enable the support coordination agency to provide support coordination for OAAS-administered home and community-based waivers within the specified DHH region; and
4. be valid for the time specified on the certification, unless revoked, suspended, modified or terminated prior to that date.

B. Provisional certification may be granted when the agency has deficiencies which are not a danger to the health and welfare of clients. Provisional licenses shall be issued for a period not to exceed 90 days.

C. Initial certification shall be issued by OAAS based on the survey report of DHH, Health Standards Section (HSS), or its designee.

D. Unless granted a waiver by OAAS, a support coordination agency shall provide such services only to waiver participants residing in the agency's designated DHH region.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§507. Certification Refusal or Revocation and Fair Hearing

A. A certification may be revoked or refused if applicable certification requirements, as determined by OAAS or its designee, have not been met. Certification decisions are subject to appeal and fair hearing, in accordance with R.S. 46:107(A)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§509. Certification Inspections

A. Certification inspections are usually annual but may be conducted at any time. No advance notice is given. Surveyors must be given access to all of the areas in the facility and all relevant files and records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

Subchapter B. Administration and Organization

§513. Governing Body

A. A support coordination agency shall have an identifiable governing body with responsibility for and authority over the policies and activities of the agency.

1. An agency shall have documents identifying all members of the governing body, their addresses, their terms of membership, officers of the governing body and terms of office of any officers.

2. The governing body shall be comprised of three or more persons and shall hold formal meetings at least twice a year.

3. There shall be written minutes of all formal meetings of the governing body and by-laws specifying frequency of meetings and quorum requirements.

B. The governing body of a support coordination agency shall:

1. ensure the agency's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;

2. ensure that the agency is adequately funded and fiscally sound;

3. review and approve the agency's annual budget;

4. designate a person to act as administrator and delegate sufficient authority to this person to manage the agency;

5. formulate and annually review, in consultation with the administrator, written policies concerning the agency's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;

6. annually evaluate the administrator's performance;

7. have the authority to dismiss the administrator;

8. meet with designated representatives of the department whenever required to do so;

9. inform the department, or its designee, prior to initiating any substantial changes in the services provided by the agency;

10. ensure that a continuous quality improvement (CQI) process is in effect; and

11. ensure that services are provided in a culturally sensitive manner as evidenced by staff trained in cultural awareness and related policies and procedures.

C. A support coordination agency shall maintain an administrative file that includes:

1. documents identifying the governing body;

2. a list of members and officers of the governing body, along with their addresses and terms of membership;

3. minutes of formal meetings and by-laws of the governing body, if applicable;

4. documentation of the agency's authority to operate under state law;

5. an organizational chart of the agency which clearly delineates the line of authority;

6. all leases, contracts and purchases-of-service agreements to which the agency is a party;

7. insurance policies;

8. annual budgets and, if performed, audit reports;

9. the agency's policies and procedures; and

10. documentation of any corrective action taken as a result of external or internal reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§515. Business Location and Operations

A. Each support coordination agency shall have a business location which shall not be in an occupied personal residence. The business location shall be in the DHH region for which the certification is issued and shall be where the agency:

1. maintains staff to perform administrative functions;

2. maintains the agency's personnel records;

3. maintains the agency's participant service records; and

4. holds itself out to the public as being a location for receipt of participant referrals.

B. The business location shall have:

1. a published nationwide toll-free telephone number answered by a person which is available and accessible 24 hours a day, seven days a week, including holidays;

2. a published local business number answered by agency staff during the posted business hours;

3. a business fax number that is operational 24 hours a day, seven days a week, including holidays;

4. internet access and a working e-mail address which shall be provided to OAAS;

5. hours of operation, which must be at least 30 hours a week, Monday through Friday, posted in a location outside of the business that is easily visible to persons receiving services and the general public; and

6. at least one staff person on the premises during posted hours of operation.

C. Records and other confidential information shall not be stored in areas deemed to be common areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§517. Financial Management

A. The agency must establish a system of financial management and staffing to assure maintenance of complete and accurate accounts, books and records in keeping with generally accepted accounting principles.

B. The agency must not permit public funds to be paid or committed to be paid, to any person who is a member of the governing board or administrative personnel who may have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the agency. The agency shall have a written disclosure of any financial transaction with the agency in which a member of the governing board, administrative personnel, or his/her immediate family is involved.

C. The agency must obtain any necessary performance bonds and/or lines of credit as required by the department.

D. The agency must have adequate and appropriate general liability insurance for the protection of its participants, staff, facilities, and the general public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§519. Policy and Procedures

A. The support coordination agency shall have written policies and procedures approved by the owner or governing body which must be implemented and followed that address at a minimum the following:

1. confidentiality and confidentiality agreements;
2. security of files;
3. publicity and marketing, including the prohibition of illegal or coercive inducement, solicitation and kickbacks;
4. personnel;
5. participant rights;
6. grievance procedures;
7. emergency preparedness;
8. abuse and neglect reporting;
9. critical incident reporting;
10. worker safety;
11. documentation; and
12. admission and discharge procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§521. Organizational Communication

A. The agency must establish procedures to assure adequate communication among staff to provide continuity of services to the participant and to facilitate feedback from staff, participants, families, and when appropriate, the community at large.

B. The agency must have brochures and make them available to OAAS or its designee. The brochures must include the following information:

1. that each participant has the freedom to choose their providers and that their choice of provider does not affect their eligibility for waiver, state plan, or support coordination services;

2. that a participant receiving support coordination through OAAS may contact the OAAS Help Line for information, assistance with, or questions about OAAS programs;

3. the OAAS Help Line number along with the appropriate OAAS regional office telephone numbers;

4. information, including the HSS Complaint Line, on where to make complaints against support coordinators, support coordination agencies, and providers; and

5. a description of the agency, services provided, current address, and the agency's local and nationwide toll-free number.

C. The brochure may also include the agency's experience delivering support coordination services.

D. The support coordination agency shall be responsible for:

1. obtaining written approval of the brochure from OAAS prior to distributing to applicants/participants of OAAS-administered waiver programs;

2. providing OAAS staff or its designee with adequate supplies of the OAAS-approved brochure; and

3. timely completing revisions to the brochure, as requested by OAAS, to accurately reflect all program changes as well as other revisions OAAS deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

Subchapter C. Provider Responsibilities

§525. General Provisions

A. Any entity wishing to provide support coordination services for any OAAS-administered home and community-based waiver program shall meet all of the Standards for Participation contained in this Rule, unless otherwise specifically noted within these provisions.

B. The support coordination agency shall also abide by and adhere to any state law, Rule, policy, procedure, performance agreement, manual or memorandum pertaining to the provision of support coordination services for OAAS-administered home and community-based waiver programs.

C. Failure to comply with the requirements of these Standards for Participation may result in sanctions including, but not limited to:

1. recoupment of funds;
2. cessation of linkages;
3. citation of deficient practice and plan of correction submission;

4. removal from the Freedom of Choice list; or

5. decertification as a support coordination agency for OAAS-administered home and community-based waiver services.

D. A support coordination agency shall make any required information or records, and any information reasonably related to assessment of compliance with these requirements, available to the department.

E. Designated representatives of the department, in the performance of their mandated duties, shall be allowed by a support coordination agency to:

1. inspect all aspects of a support coordination agency operations which directly or indirectly impact participants; and

2. conduct interviews with any staff member or participant of the agency.

F. A support coordination agency shall, upon request by the department, make available the legal ownership documents of the agency. G. Support coordination agencies must comply with all of the department's systems/software requirements.

H. Support coordination agencies shall, at a minimum:

1. maintain and/or have access to a resource directory containing all of the current inventory of existing formal and informal resources that identifies services within the geographic area which shall address the unique needs of the elderly and adults with physical disabilities;

2. establish linkages with those resources;

3. demonstrate knowledge of the eligibility requirements and application procedures for federal, state and local government assistance programs, which are applicable to the elderly and adults with physical disabilities;

4. employ a sufficient number of support coordinators and supervisory staff to comply with OAAS staffing, continuous quality improvement (CQI), timeline, workload, and performance requirements;

5. demonstrate administrative capacity and the financial resources to provide all core elements of support coordination services and ensure effective service delivery in accordance with programmatic requirements;

6. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations (subcontracting of individual support coordinators and/or supervisors is prohibited);

7. have appropriate agency staff attend trainings, as mandated by DHH and OAAS;

8. have a documented CQI process;

9. document and maintain records in accordance with federal and state regulations governing confidentiality and program requirements;

10. assure each participant has freedom of choice in the selection of available qualified providers and the right to change providers in accordance with program guidelines; and

11. assure that the agency and support coordinators will not provide both support coordination and Medicaid-reimbursed direct services to the same participant(s).

I. Abuse and Neglect. Support coordination agencies shall establish policies and procedures relative to the reporting of abuse and neglect of participants, pursuant to the provisions of R.S. 15:1504-1505, R.S. 40:2009.20 and any subsequently enacted laws. Providers shall ensure that staff complies with these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§527. Support Coordination Services

A. Support coordination is services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing and other services, regardless of the funding source for these services. Support coordination agencies shall be required to perform the following core elements of support coordination services:

1. intake;
2. assessment;
3. plan of care development and revision;
4. linkage to direct services and other resources;
5. coordination of multiple services among multiple providers
6. monitoring/follow-up;
7. reassessment;
8. evaluation and re-evaluation of level of care and need for waiver services;
9. ongoing assessment and mitigation of health, behavioral and personal safety risk;
10. responding to participant crisis;
11. critical incident management; and
12. transition/discharge and closure.

B. The support coordination agency shall also be responsible for assessing, addressing and documenting delivery of services, including remediation of difficulties encountered by participants in receiving direct services.

C. A support coordination agency shall not refuse to serve, or refuse to continue to serve, any individual who chooses/has chosen its agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

1. OAAS must be immediately notified of the circumstances surrounding a refusal by a support coordination agency to provide/continue to provide services.

2. This requirement can only be waived by OAAS.

D. Support coordination agencies must establish and maintain effective communication and good working relationships with providers of services to participants served by the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§529. Transfers and Discharges

A. All participants of OAAS-administered waiver programs must receive support coordination services. However, a participant has the right to choose a support coordination agency. This right includes the right to be discharged from his/her current support coordination agency and be transferred to another support coordination agency.

B. Upon notice by the participant or his/her authorized representative that the participant has selected another support coordination agency or the participant has decided to discontinue participation in the waiver program, the agency shall have the responsibility of planning for the participant's transfer or discharge.

C. The support coordination agency shall also have the responsibility of planning for a participant's transfer when the support coordination agency ceases to operate or when the participant moves from the geographical region serviced by the support coordination agency.

D. The transfer or discharge responsibilities of the support coordinator shall include:

1. holding a transfer or discharge planning conference with the participant, his/her family, providers, legal representative and advocate, if such are known, in order to

facilitate a smooth transfer or discharge, unless the participant declines such a meeting;

2. providing a current plan of care to the receiving support coordination agency (if applicable); and

3. preparing a written discharge summary. The discharge summary shall include, at a minimum, a summary on the health, behavioral, and social issues of the client and shall be provided to the receiving support coordination agency (if applicable).

E. The written discharge summary shall be completed within five working days of any of the following:

1. notice by the participant or authorized representative that the participant has selected another support coordination agency;

2. notice by the participant or authorized representative that the participant has decided to discontinue participation in the waiver program;

3. notice by the participant or authorized representative that the participant will be transferring to a DHH geographic region not serviced by his/her current support coordination agency; or

4. notice from OAAS or its designee that "good cause" has been established by the support coordination agency to discontinue services.

F. The support coordination agency shall not coerce the participant to stay with the support coordination agency or interfere in any way with the participant's decision to transfer. Failure to cooperate with the participant's decision to transfer to another support coordination agency will result in adverse action by department.

G. If a support coordination agency closes, the agency must give OAAS at least 30 days written notice of its intent to close. Where transfer of participants is necessary due to the support coordination agency closing, the written discharge summary for all participants served by the agency shall be completed within 10 working days of the notice to OAAS of the agency's intent to close.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§531. Staffing Requirements

A. Agencies must maintain sufficient staff to comply with OAAS staffing, timeline, workload, and performance requirements. This includes, but is not limited to, including sufficient support coordinators and support coordinator supervisors that have passed all of the OAAS training and certification requirements. In no case may an agency have less than one certified support coordination supervisor and less than one certified support coordinator. Agencies may employ staff who are not certified to perform services or requirements other than assessment and care planning.

B. Agencies must maintain sufficient supervisory staff to comply with OAAS supervision and CQI requirements. Support coordination supervisors must be continuously available to support coordinators by telephone.

1. Each Support Coordination agency must have and implement a written plan for supervision of all support coordination staff.

2. Each supervisor must maintain a file on each support coordinator supervised and hold supervisory

sessions and evaluate each support coordinator at least annually.

C. Agencies shall employ or contract a licensed registered nurse to serve as a consultant. The nurse consultant shall be available a minimum of 16 hours per month.

D. Agencies shall ensure that staff is available at times which are convenient and responsive to the needs of participants and their families.

E. Support coordinators, whether part-time or full-time, may only carry caseloads that are composed exclusively of OAAS participants. Support coordination supervisors, whether part-time or full-time, may only supervise support coordinators that carry caseloads that are composed exclusively of OAAS participants. AUTHORITY NOTE:

Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§533. Personnel Standards

A. Support coordinators must meet one of the following requirements:

1. a bachelor's or masters degree in social work from a program accredited by the Council on Social Work Education;

2. a bachelor's or masters degree in nursing (RN) currently licensed in Louisiana (one year of paid experience as a licensed RN will substitute for the degree);

3. a bachelor's or masters degree in a human service related field which includes:

- a. psychology;
- b. education;
- c. counseling;
- d. social services;
- e. sociology;
- f. philosophy;
- g. family and participant sciences;
- h. criminal justice;
- i. rehabilitation services;
- j. substance abuse treatment;
- k. gerontology; and
- l. vocational rehabilitation; or

4. a bachelor's degree in liberal arts or general studies with a concentration of at least 16 hours in one of the fields in §529A.3.a-l.

B. Support coordination supervisors must meet the following requirements:

1. a bachelor's or masters degree in social work from a program accredited by the Council on Social Work Education and two years of paid post degree experience in providing support coordination services;

2. a bachelor's or masters degree in nursing (RN)(one year of experience as a licensed RN will substitute for the degree) and two years of paid post degree experience in providing support coordination services;

3. a bachelor's or masters degree in a human service related field which includes: psychology, education, counseling, social services, sociology, philosophy, family and participant sciences, criminal justice, rehabilitation services, child development, substance abuse, gerontology, and vocational rehabilitation and two years of paid post degree experience in providing support coordination services; or

4. a bachelor's degree in liberal arts or general studies with a concentration of at least 16 hours in one of the following fields: psychology, education, counseling, social services, sociology, philosophy, family and participant sciences, criminal justice, rehab services, child development, substance abuse, gerontology, and vocational rehabilitation and two years of paid post degree experience in providing support coordination services.

C. Documentation showing that personnel standards have been met must be placed in the individual's personnel file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§535. Employment and Recruitment Practices

A. A support coordination agency shall have written personnel policies, which must be implemented and followed, that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members;

2. a policy to prevent discrimination and comply with all state and federal employment practices and laws;

3. a policy to recruit, wherever possible, qualified persons of both sexes representative of cultural and racial groups served by the agency, including the hiring of qualified persons with disabilities;

4. written job descriptions for each staff position, including volunteers;

5. an employee grievance procedure that allows employees to make complaints without fear of retaliation; and

6. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment, whether that abuse or mistreatment is done by another staff member, a family member, a participant or any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§537. Orientation and Training

A. Support coordinators must receive necessary orientation and periodic training on the provision of support coordination services arranged or provided through their agency at the agency's expense.

B. Orientation of at least 16 hours shall be provided by the agency to all staff, volunteers and students within five working days of employment which shall include, at a minimum:

1. core OAAS support coordination requirements;

2. policies and procedures of the agency;

3. confidentiality;

4. documentation of case records;

5. participant rights protection and reporting of violations;

6. abuse and neglect policies and procedures;

7. professional ethics;

8. emergency and safety procedures;

9. infection control, including universal precautions; and

10. critical incident reporting.

C. In addition to the minimum 16 hours of orientation, all newly hired support coordinators must receive a minimum of 16 hours of training during the first 90 calendar days of employment which is related to the specific population served and knowledge, skills and techniques necessary to provide support coordination to the specific population. This training must be provided by an individual or organization with demonstrated knowledge of the training topic and the target population. Such resources may be identified and/or mandated by OAAS. These 16 hours of training must include, at a minimum:

1. fundamentals of support coordination;

2. interviewing techniques;

3. data management and record keeping;

4. communication skills;

5. risk assessment and mitigation;

6. person centered planning;

7. emergency preparedness planning;

8. resource identification;

9. back-up staff planning;

10. critical incident reporting; and

11. continuous quality improvement.

D. In addition to the agency-provided training requirements set forth above, support coordinators and support coordination supervisors must successfully complete all OAAS Assessment and Care Planning Training.

E. No support coordinator shall be given sole responsibility for a participant until all of the required training is satisfactorily completed and the employee possesses adequate abilities, skills, and knowledge of support coordination.

F. All support coordinators and support coordination supervisors must complete a minimum of 40 hours of training per calendar year. For new employees, the orientation cannot be counted toward the 40 hour minimum annual training requirement. The 16 hours of initial training for support coordinators required in the first 90 days of employment may be counted toward the 40 hour minimum annual training requirement. Routine supervision shall not be considered training.

G. A newly hired or promoted support coordination supervisor must, in addition to satisfactorily completing the orientation and training set forth above, also complete a minimum of 24 hours on all of the following topics prior to assuming support coordination supervisory responsibilities:

1. professional identification/ethics;

2. process for interviewing, screening and hiring staff;

3. orientation/in-service training of staff;

4. evaluating staff;

5. approaches to supervision;

6. managing workload and performance requirements;

7. conflict resolution;

8. documentation;

9. population specific service needs and resources;

10. participant evacuation tracking; and

11. the support coordination supervisor's role in CQI systems.

H. Documentation of all orientation and training must be placed in the individual's personnel file. Documentation must include an agenda and the name, title, agency

affiliation of the training presenter(s) and other sources of training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§539. Participant Rights

A. Unless adjudicated by a court of competent jurisdiction, participants served by a support coordination agency shall have the same rights, benefits, and privileges guaranteed by the constitution and the laws of the United States and Louisiana.

B. There shall be written policies and procedures that protect the participant's welfare, including the means by which the protections will be implemented and enforced.

C. Each Support Coordination agency's written policies and procedures, at a minimum, shall ensure the participant's right to:

1. human dignity;
2. impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;
3. cultural access as evidenced by:
 - a. interpretive services;
 - b. translated materials;
 - c. the use of native language when possible; and
 - d. staff trained in cultural awareness;
4. have sign language interpretation;
5. utilize service animals and/or mechanical aids and devices that assist those persons with special needs to achieve maximum service benefits;
6. privacy;
7. confidentiality;
8. access his/her records upon the participant's written consent for release of information;
9. a complete explanation of the nature of services and procedures to be received, including:
 - a. risks;
 - b. benefits; and
 - c. available alternative services;
10. actively participate in services, including:
 - a. assessment/reassessment;
 - b. plan of care development/revision; and
 - c. discharge;
11. refuse specific services or participate in any activity that is against their will and for which they have not given consent;
12. obtain copies of the support coordination agency's complaint or grievance procedures;
13. file a complaint or grievance without retribution, retaliation or discharge;
14. be informed of the financial aspect of services;
15. be informed of any third-party consent for treatment of services, if appropriate;
16. personally manage financial affairs, unless legally determined otherwise;
17. give informed written consent prior to being involved in research projects;
18. refuse to participate in any research project without compromising access to services;
19. be free from mental, emotional and physical abuse and neglect;
20. be free from chemical or physical restraints;

21. receive services that are delivered in a professional manner and are respectful of the participant's wishes concerning their home environment;

22. receive services in the least intrusive manner appropriate to their needs;

23. contact any advocacy resources as needed, especially during grievance procedures; and

24. discontinue services with one provider and freely choose the services of another provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§541. Grievances

A. The support coordination agency shall establish and follow a written grievance procedure to be used to process complaints by participants, their family member(s), or a legal representative that is designed to allow participants to make complaints without fear of retaliation. The written grievance procedure shall be provided to the participant.

B. Grievances must be periodically reviewed by the governing board in an effort to promote improvement in these areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§543. Critical Incident Reporting

A. Support coordination agencies shall report critical incidents according to established OAAS policy including timely entries into the designated DHH Critical Incident Database.

B. Support coordination agencies shall perform the following critical incident management actions:

1. coordinate immediate action to assure the participant is protected from further harm and respond to any emergency needs of the participant;
2. continue to follow up with the direct services provider agency, the participant, and others, as necessary, and update the Critical Incident Database follow-up notes until the incident is closed by OAAS;
3. convene any planning meetings that may be needed to resolve the critical incident or develop strategies to prevent or mitigate the likelihood of similar critical incidents from occurring in the future and revise the plan of care accordingly;
4. send the participant and direct services provider a copy of the Incident Participant Summary within 15 days after final supervisory review and closure by the regional office; and
5. during the plan of care review process, perform an annual Critical Incident Analysis and Risk Assessment and document within the plan of care strategies to prevent or mitigate the likelihood of similar future critical incidents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§545. Participant Records

A. Participant records shall be maintained in the support coordinator's office. The support coordinator shall have a

current written record for each participant which shall include:

1. identifying data including:
 - a. name;
 - b. date of birth;
 - c. address;
 - d. telephone number;
 - e. social security number; and
 - f. legal status;
2. a copy of the participant's plan of care, as well as any revisions or updates to the plan of care;
3. required assessment(s) and any additional assessments that the agency may have performed, received, or are otherwise privy to;
4. written monthly, interim, and quarterly documentation according to current policy and reports of the services delivered for each participant for each visit and contact;
5. current Emergency Planning and Agreement Form; and
6. current Back-up Staffing and Agreement Form.

B. Support Coordination agencies shall maintain participant records for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§547. Emergency Preparedness

A. Support coordination agencies shall ensure that each participant has an individual plan for dealing with emergencies and disasters and shall assist participants in identifying the specific resources available through family, friends, the neighborhood, and the community. The support coordinator shall assess monthly whether the emergency plan information is current and effective and shall make changes accordingly.

B. A disaster or emergency may be a local, community-wide, regional, or statewide event. Disasters or emergencies may include, but are not limited to:

1. tornados;
2. fires;
3. floods;
4. hurricanes;
5. power outages;
6. chemical spills;
7. biohazards;
8. train wrecks; or
9. declared health crisis.

C. Support Coordination agencies shall update participant evacuation tracking information and submit such to OAAS in the required format and timelines as described in the current OAAS policy for evacuation preparedness.

D. Continuity of Operations. The support coordination agency shall have an emergency preparedness plan to maintain continuity of the agency's operations in preparation for, during, and after an emergency or disaster. The plan shall be designed to manage the consequences of all hazards, declared disasters or other emergencies that disrupt the agency's ability to render services.

E. The support coordination agency shall follow and execute its emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

F. The support coordinator shall cooperate with the department and with the local or parish Office of Homeland Security and Emergency Preparedness in the event of an emergency or disaster and shall provide information as requested.

G. The support coordinator shall monitor weather warnings and watches as well as evacuation orders from local and state emergency preparedness officials.

H. All agency employees shall be trained in emergency or disaster preparedness. Training shall include orientation, ongoing training, and participation in planned drills for all personnel.

I. Upon request by the department, the support coordination agency shall submit a copy of its emergency preparedness plan and a written summary attesting to how the plan was followed and executed. The summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of participants that occurred during execution of the plan, evacuation or temporary relocation including the date, time, causes, and circumstances of the injuries and deaths

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§549. Continuous Quality Improvement Plan

A. Support coordination agencies shall have a Continuous Quality Improvement Plan which governs the agency's internal quality management activities.

B. The CQI plan shall demonstrate a process of continuous cyclical improvement and should utilize the Centers for Medicare and Medicaid Services' "DDRI" operative framework for quality reporting of the Medicaid home and community-based services (HCBS) waivers. "DDRI" is comprised of the following four components which are a common vocabulary linking CMS' expectations and state quality efforts:

1. design;
2. discovery;
3. remediation; and
4. improvement.

C. The CQI plan shall follow an evidence-based approach to quality monitoring with an emphasis on the assurances which the state must make to CMS. The assurances falling under the responsibility of support coordination are those of participant health and welfare, level of care determination, plan of care development, and qualified agency staff.

D. CQI plans shall include, at a minimum:

1. internal quality performance measures and valid sampling techniques to measure all of the OAAS support coordination monitoring review elements;
2. strategies and actions which remediate findings of less than 100 percent compliance and demonstrate ongoing

improvement in response to internal and OAAS quality monitoring findings;

3. a process to review, resolve and redesign in order to address all systemic issues identified;

4. a process for obtaining input annually from the participant/guardian/authorized representatives and possibly family members to include, but not be limited to:

- a. satisfaction surveys done by mail or phone; or
- b. other processes for receiving input regarding the quality of services received;

5. a process for identifying on a quarterly basis the risk factors that affects or may affect the health, safety and/or welfare of individuals being supported which includes, but is not limited to:

- a. review and resolution of complaints;
- b. review and resolution of incidents; and
- c. the respective Protective Services' agency's investigations of abuse, neglect and exploitation;

6. a process to review and resolve individual participant issues that are identified; and

7. a process to actively engage all agency staff in the CQI Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

§551. Support Coordination Monitoring

A. Support coordination agencies shall offer full cooperation with the OAAS during the monitoring process. Responsibilities of the Support Coordination agency in the monitoring process include, but are not limited to:

1. providing policy and procedure manuals, personnel records, case records, and other documentation;
2. providing space for documentation review and support coordinator interviews;
3. coordinating agency support coordinator interviews; and
4. assisting with scheduling participant interviews.

B. There shall be an annual OAAS support coordination monitoring of each support coordination agency and the results of this monitoring will be reported to the support coordination agency along with required follow-up actions and timelines. All individual findings of noncompliance must be addressed, resolved and reported to OAAS within specified timelines. All recurrent problems shall be addressed through systemic changes resulting in improvement. Agencies which do not perform all of the required follow-up actions according to the timelines will be subject to sanctions of increasing severity as described in §525.C.1-5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and Office of Aging and Adult Services, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#057

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Hospice Services
(LAC 50:XV.Chapters 33-35, 3701-3703,
Chapters 39-41, 4303-4305, 4309)

The Department of Health and Hospitals, Bureau of Health Services Financing, amends LAC 50:XV.Chapters 33-35, §§3701-3703, Chapters 39-41, §§4303-4305, and §4309 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for hospice services provided to long-term care residents to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 9).

The department now proposes to amend the provisions governing hospice services in order to bring these provisions into compliance with the requirements of the Patient Protection and Affordable Care Act (PPACA). This Emergency Rule will also amend the provisions governing prior authorization for hospice services in order to control the escalating costs associated with the Hospice Program.

This action is being taken to avoid sanctions from the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for noncompliance with PPACA requirements, and to avoid a budget deficit in the medical assistance programs. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program for hospice services by approximately \$501,871 for state fiscal year 2011-2012.

Effective May 1, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Hospice Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 3. Hospice

Chapter 33. Provider Participation

§3301. Conditions for Participation

A. Statutory Compliance

1. Coverage of Medicaid hospice care shall be in accordance with:

- a. 42 USC 1396d(o); and

b. the Medicare Hospice Program guidelines as set forth in 42 CFR Part 418.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:1024 (May 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 35. Recipient Eligibility

§3501. Election of Hospice Care

A. - F. ...

G. Election Statement Requirements. The election statement must include:

1. identification of the particular hospice that will provide care to the individual;
2. the individual's or his/her legal representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the individual's terminal illness;
3. acknowledgment that certain Medicaid services, as set forth in §3503 are waived by the election;
4. the effective date of the election, which may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement; and
5. the signature of the individual or his/her legal representative.

H. Duration of Election. An election to receive hospice care will be considered to continue through the initial election period and through the subsequent election periods without a break in care as long as the individual:

1. remains in the care of a hospice;
2. does not revoke the election under the provisions of §3505; and
3. is not discharged from hospice in accordance with §3505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 19:749 (June 1993), amended LR 28:1466 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§3503. Waiver of Payment for Other Services

A. - A.2.c. ...

B. Individuals who are approved to receive hospice may not receive any other non-waiver home and community-based services, such as long-term personal care services, while they are receiving hospice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§3505. Revoking the Election of Hospice Care/Discharge

A. - A.4. ...

5. Re-election of Hospice Benefits. If an election has been revoked in accordance with the provisions of this §3505, the individual or his/her representative may at any

time file an election, in accordance with §3501, for any other election period that is still available to the individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 37. Provider Requirements

§3701. Requirements for Coverage

A. To be covered, a Certification of Terminal Illness must be completed as set forth in §3703, the Election of Hospice Care Form must be completed in accordance with §3501, and a plan of care must be established in accordance with §3705. A written narrative from the referring physician explaining why the patient has a prognosis of six months or less must be included in the Certificate of Terminal Illness. Prior authorization requirements stated in Chapter 41 of these provisions are applicable to all election periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1467 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§3703. Certification of Terminal Illness

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

b. For the first 90-day period of hospice coverage, the hospice must obtain a verbal certification no later than 2 calendar days after hospice care is initiated. If the verbal certification is not obtained within two calendar days following the initiation of hospice care, a written certification must be made within 10 calendar days following the initiation of hospice care. The written certification and notice of election must be obtained before requesting prior authorization for hospice care. If these requirements are not met, no payment is made for the days prior to the certification. Instead, payment begins with the day of certification, i.e., the date all certification forms are obtained.

c. For the subsequent periods, a written certification must be included in an approved prior authorization packet before a claim may be billed.

2. - 2.c. ...

d. If verbal certification is made, the referral from the physician shall be received by a member of the hospice interdisciplinary group (IDG). The entry in the patient's clinical record of the verbal certification shall include, at a minimum:

i. - ii. ...

iii. terminal diagnosis(es) and all other diagnosis(es);

iv. - v. ...

3. Face-to-Face Encounter

a. A hospice physician or hospice nurse practitioner must have a face-to-face encounter with each hospice patient whose total stay across all hospices is anticipated to reach the third benefit period. The face-to-face encounter must occur prior to, but no more than 30 calendar days prior to, the third benefit period recertification, and every benefit period recertification thereafter, to gather clinical findings to determine continued eligibility for hospice care.

b. The physician or nurse practitioner who performs the face-to-face encounter with the patient must attest in writing that he or she had a face-to-face encounter with the patient, including the date of that visit. The attestation of the nurse practitioner or a non-certifying hospice physician shall state that the clinical findings of that visit were provided to the certifying physician for use in determining continued eligibility for hospice care.

4. Content of Certifications

a. Certification will be based on the physician's or medical director's clinical judgment regarding the normal course of the individual's illness. The certification must conform to the following requirements.

i. The certification must specify that the individual's prognosis is for a life expectancy of six months or less if the terminal illness runs its normal course.

ii. Written clinical information and other documentation that support the medical prognosis must accompany the certification and must be filed in the medical record with the written certification, as set forth in Subparagraph 4 of this Section.

iii. The physician must include a brief written narrative explanation of the clinical findings that support a life expectancy of six months or less as part of the certification and recertification forms, or as an addendum to the certification and recertification forms.

(a). The narrative must reflect the patient's individual clinical circumstances and cannot contain check boxes or standard language used for all patients.

(b). The narrative associated with the third benefit period recertification and every subsequent recertification must include an explanation of why the clinical findings of the face-to-face encounter support a life expectancy of six months or less, and shall not be the same narrative as previously submitted.

b. All certifications and recertifications must be signed and dated by the physician(s), and must include the benefit period dates to which the certification or recertification applies.

5. Sources of Certification

a. For the initial 90-day period, the hospice must obtain written certification statements as provided in §3703.A.1 from:

i. ...

ii. the individual's attending physician. The attending physician is a doctor of medicine or osteopathy and is identified by the individual, at the time he or she elects to receive hospice care, as having the most significant role in the determination and delivery of the individual's medical care. The attending physician is the physician identified within the Medicaid system as the provider to which claims have been paid for services prior to the time of the election of hospice benefits.

b. ...

6. Maintenance of Records. Hospice staff must make an appropriate entry in the patient's clinical record as soon as they receive an oral certification and file written certifications in the clinical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 19:749 (June 1993), amended LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 39. Covered Services

§3901. Medical and Support Services

A. - A.11.b.iv. ...

c. Inpatient Respite Care Day. An inpatient respite care day is a day on which the individual receives care in an approved facility on a short-term basis, not to exceed five days in any one election period, to relieve the family members or other persons caring for the individual at home. An approved facility is one that meets the standards as provided in 42 CFR §418.98(b). This service cannot be delivered to individuals already residing in a nursing facility.

d. General Inpatient Care Day. A general inpatient care day is a day on which an individual receives general inpatient care in an inpatient facility that meets the standards as provided in 42 CFR §418.98(a) and for the purpose of pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care shall not exceed five days in any one election period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1468 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 41. Prior Authorization

§4101. Prior Authorization of Hospice Services

A. Prior authorization is required for all election periods as specified in §3501.C of this Subpart. The prognosis of terminal illness will be reviewed. A patient must have a terminal prognosis and not just certification of terminal illness. Authorization will be made on the basis that a patient is terminally ill as defined in federal regulations. These regulations require certification of the patient's prognosis, rather than diagnosis. Authorization will be based on objective clinical evidence contained in the clinical record which supports the medical prognosis that the patient's life expectancy is six months or less if the illness runs its normal course and not simply on the patient's diagnosis.

1. Providers shall submit the appropriate forms and documentation required for prior authorization of hospice services as designated by the department in the Medicaid Program's service and provider manuals, memorandums, etc.

B. Written Notice of Denial. In the case of a denial, a written notice of denial shall be submitted to the hospice, recipient, and nursing facility, if appropriate.

1. Claims will only be paid from the date of the hospice notice of election if the prior authorization request is received within 10 days from the date of election and is approved. If the prior authorization request is received 10 days or more after the date on the hospice notice of election, the approved begin date for hospice services is the date the completed prior authorization packet is received.

C. Appeals. If the hospice or the recipient does not agree with the denial of a hospice prior authorization request, the recipient, or the hospice on behalf of the recipient, can request an appeal of the prior authorization decision. The appeal request must be filed with the Division of Administrative Law within 30 days from the date of the postmark on the denial letter. The appeal proceedings will be

conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 43. Reimbursement

§4303. Levels of Care for Payment

A. - B.3. ...

C. Inpatient Respite Care. The inpatient respite care rate is paid for each day the recipient is in an approved inpatient facility and is receiving respite care (see §3901.A.11.c). Respite care may be provided only on an occasional basis and payment for respite care may be made for a maximum of five days at a time including the date of admission but not counting the date of discharge. Payment for the day of discharge in a respite setting shall be at the routine home level-of-care discharged alive rate.

1. ...

2. Respite care may not be provided when the hospice patient is a nursing home resident, regardless of the setting, i.e., long-term acute care setting.

D. General Inpatient Care. Payment at the inpatient rate is made when an individual receives general inpatient care in an inpatient facility for pain control or acute or chronic symptom management which cannot be managed in other settings. General inpatient care is a short-term level of care and is not intended to be a permanent solution to a negligent or absent caregiver. A lower level of care must be used once symptoms are under control. General inpatient care and nursing facility or intermediate care facility for persons with intellectual disabilities room and board cannot be reimbursed for the same recipient on the same covered days of service. Payment for general inpatient care may be made for a maximum of five days at a time, including the date of admission, but not counting the date of discharge. Payment for the day of discharge in a general inpatient setting shall be at the routine home level-of-care discharged alive rate.

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§4305. Hospice Payment Rates

A. - A.2. ...

a. The hospice is paid for other physicians' services, such as direct patient care services, furnished to individual patients by hospice employees and for physician services furnished under arrangements made by the hospice unless the patient care services were furnished on a volunteer basis. The physician visit for the face-to-face encounter will not be reimbursed by the Medicaid Program.

b. - d.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1470 (June 2002), LR 34:441 (March

2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§4309. Limitation on Payments for Inpatient Care

A. ...

1. During the 12-month period beginning November 1 of each year and ending October 31, the number of inpatient days (both for general inpatient care and inpatient respite care) for any one hospice recipient may not exceed five days per occurrence.

2. - 2.b....

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1472 (June 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#049

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Reimbursement Methodology—Medical Education
Payments (LAC 50:V.551, 967 and 1331)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.551, §967 and §1331 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions under the Medicaid State Plan to establish a coordinated system of care through an integrated network for the delivery of healthcare services to Medicaid recipients (Louisiana Register, Volume 37, Number 6). This delivery system, comprised of managed care organizations (MCOs), was implemented to improve performance and health care outcomes for Medicaid recipients. The per member per month reimbursements to MCOs do not include payments for medical education services rendered by participating hospitals.

Therefore, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services which adopted provisions to continue medical education payments to state hospitals, children's specialty hospitals and acute care hospitals classified as teaching hospitals when the hospitals are reimbursed by prepaid risk-bearing MCOs for inpatient hospital services (Louisiana Register, Volume 38, Number 2). The department now proposes to amend the February 1, 2012 Emergency Rule to clarify the provisions governing the reimbursement methodology for inpatient hospital services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective March 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 1, 2012 Emergency Rule which amended the provisions governing the reimbursement methodology for inpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 5. State Hospitals

Subchapter B. Reimbursement Methodology

§551. Acute Care Hospitals

A. - D. ...

E. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid monthly by Medicaid as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. Qualifying medical education programs are defined as graduate medical education, paramedical education, and nursing schools.

2. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days times the medical education costs included in each state hospital's interim per diem rate as calculated per the latest filed Medicaid cost report.

3. Final payment shall be determined based on the actual MCO covered days and allowable inpatient Medicaid medical education costs for the cost reporting period per the Medicaid cost report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§967. Children's Specialty Hospitals

A. - H. ...

I. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid by Medicaid monthly as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. Qualifying medical education programs are defined as graduate medical education, paramedical education, and nursing schools.

2. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days times the medical education costs included in each children's specialty hospital's interim per diem rate as calculated per the latest filed Medicaid cost report.

3. Final payment shall be determined based on the actual MCO covered days and medical education costs for the cost reporting period per the Medicaid cost report. Reimbursement shall be at the same percentage that is reimbursed for fee-for-service covered Medicaid costs after application of reimbursement caps as specified in §967.A.-C and reductions specified in §967.F.-H.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2562 (November 2010), LR 37:2162 (July 2011), LR 38:

Chapter 13. Teaching Hospitals

Subchapter B. Reimbursement Methodology

§1331. Acute Care Hospitals

A. - E. ...

F. Effective for dates of service on or after February 1, 2012, medical education payments for inpatient services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be paid monthly by Medicaid as interim lump sum payments.

1. Hospitals with qualifying medical education programs shall submit a listing of inpatient claims paid each month by each MCO.

a. Qualifying medical education programs are defined as graduate medical education, paramedical education, and nursing schools.

2. Qualifying hospitals must have a direct medical education add-on component included in their prospective Medicaid per diem rates as of January 31, 2012 which was carved-out of the per diem rate reported to the MCOs.

3. Monthly payments shall be calculated by multiplying the number of qualifying inpatient days submitted by the medical education costs component included in each hospital's fee-for-service prospective per diem rate. Monthly payment amounts shall be verified by the department semi-annually using reports of MCO covered days generated from encounter data. Payment adjustments or recoupments shall be made as necessary based on the MCO encounter data reported to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:877 (May 2008), LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#050

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Small Rural Hospitals Upper Payment Limit (LAC 50:V.1125 and 1127)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.1125 and 1127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for inpatient acute care services and psychiatric services (*Louisiana Register*, Volume 35, Number 5).

Act 883 of the 2010 Regular Session of the Louisiana Legislature directed the department to implement a payment methodology to optimize Medicaid payments to rural hospitals for inpatient and outpatient services. In compliance with the directives of Act 883, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for small rural hospitals to reimburse inpatient hospital services up to the Medicare inpatient upper payment limits (*Louisiana Register*, Volume 36, Number 8). This action is being taken to continue the provisions of the August 1, 2010 Emergency Rule. This Emergency Rule is promulgated to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective March 28, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for inpatient hospital services rendered by small rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospital Services

Chapter 11. Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§1125. Small Rural Hospitals

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement for inpatient acute care services rendered by small rural hospitals shall be up to the Medicare upper payment limits for inpatient hospital services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§1127. Inpatient Psychiatric Hospital Services

A. - C. ...

D. Effective for dates of service on or after August 1, 2010, the reimbursement paid for psychiatric services rendered by distinct part psychiatric units in small rural hospitals shall be up to the Medicare inpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:955 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#059

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Intermediate Care Facilities for Persons with Developmental Disabilities Non-State Facilities—Reimbursement Methodology (LAC 50:VII.32903)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:VII.32903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.B(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of the allocation of additional funds by the legislature during the 2009 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities (ICFs/DD) to increase the per diem rates (*Louisiana Register*, Volume 36, Number 7). As a result of a budgetary shortfall in state fiscal year 2011, the department

determined that it was necessary to amend the provisions governing the reimbursement methodology for non-state ICFs/DD to reduce the per diem rates (*Louisiana Register*, Volume 36, Number 8).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for non-state ICFs/DD to restore the per diem rates paid to private providers who have downsized large facilities to less than 35 beds and incurred unusually high capital costs as a result of the downsizing (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to protect the health and welfare of Medicaid recipients and to insure continued provider participation in the Medicaid Program.

Effective March 28, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-state intermediate care facilities for persons with developmental disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter A. Non-State Facilities

§32903. Rate Determination

A. - J. ...

K. Effective for dates of service on or after August 1, 2010, the per diem rates for non-state intermediate care facilities for persons with developmental disabilities shall be reduced by 2 percent of the per diem rates on file as of July 31, 2010.

L. Effective for dates of service on or after August 1, 2010, the per diem rates for ICFs/DD which have downsized from over 100 beds to less than 35 beds prior to December 31, 2010 shall be restored to the rates in effect on January 1, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:2253 (September 2005), amended LR 33:462 (March 2007), LR 33:2202 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1555 (July 2010), amended LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#058

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Emergency Ambulance Services—Supplemental Payments
(LAC 50:XXVII.327 and 355)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.327 and §355 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. The department promulgated an Emergency Rule which established supplemental payments for governmental ambulance providers who render emergency medical transportation services to low income and needy patients in the state of Louisiana (*Louisiana Register*, Volume 37, Number 6). The department promulgated an Emergency Rule which amended the provisions of the July 1, 2011 Emergency Rule to allow supplemental payments for all ambulance providers who render emergency medical transportation services to low income and needy patients (*Louisiana Register*, Volume 37, Number 7). The July 20, 2011 Emergency Rule was amended to allow supplemental payments to providers of air ambulance transportation services (*Louisiana Register*, Volume 37, Number 8). The department promulgated an Emergency Rule which rescinded and replaced the July 1, 2011, the July 20, 2011, and the August 20, 2011 Emergency Rules in order to promulgate clear and concise provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 37, Number 9). The department promulgated an Emergency Rule which amended the September 20, 2011 Emergency Rule to clarify the provisions governing supplemental payments for emergency ambulance services (*Louisiana Register*, Volume 37, Number 12). The department now proposes to amend the December 20, 2011 Emergency Rule to further clarify the provisions governing supplemental payments for emergency ambulance services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to emergency ambulance services.

Effective March 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the December 20, 2011 Emergency Rule governing supplemental payments for emergency medical transportation services rendered by ambulance providers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§327. Supplemental Payments for Ambulance

Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical transportation services rendered during the quarter.

B. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to qualify to receive supplemental payments. The ambulance service provider must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider;
3. provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170; and
4. be affiliated with the Statewide Ambulance Service District.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of:

1. the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate; and
2. the difference between the payments made to these qualifying providers for emergency medical transportation and air ambulance services provided to uninsured patients and the average amount that would have been paid at the equivalent community rate.

D. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level. The community rate is defined as the average amount payable by commercial insurers for the same services.

E. Supplemental Payment Calculation. The following methodology shall be used to establish the quarterly supplemental payment for ambulance providers:

1. The department shall identify Medicaid ambulance service providers that were qualified to receive supplemental Medicaid reimbursement for emergency medical transportation services and air ambulance services during the quarter.

2. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

3. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under Paragraph E.2.

4. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under Paragraph E.2.

5. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under Paragraph E.3 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under Paragraph E.4.

6. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under Paragraph E.5.

7. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from Paragraph E.6.

8. The department will reimburse providers based on the following criteria.

a. For ambulance service providers identified in Paragraph E.1 located in large urban areas and owned by governmental entities, reimbursement will be up to 130 percent of the provider's average commercial rate calculated in Paragraph E.7. Aggregate payment will never exceed the maximum as defined in Subsection H. below.

b. For all other ambulance service providers identified in Paragraph E.1 reimbursement will be up to 80 percent of the provider's average commercial rate calculated in Paragraph E.7.

9. - 17. Repealed.

F. Calculation of Average Commercial Rate. The supplemental payment will be determined in a manner to bring payments for these services up to the average commercial rate level.

1. For purposes of these provisions, the average community rate level is defined as the average amount payable by the commercial payers for the same services.

2. The state will align the paid Medicaid claims with the Medicare fees for each HCPCS or CPT code for the ambulance provider and calculate the Medicare payment for those claims. The state will then calculate an overall Medicare to commercial conversion factor for each ambulance provider by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims. The commercial to Medicare ratio for each provider will be re-determined at least every three years.

G. The supplemental payment will be made effective for emergency medical transportation provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually, but shall be made no less than every three years.

H. The total amount to be paid by the state to qualified Medicaid ambulance service providers for supplemental Medicaid payments shall not exceed the total of the

Medicaid payment differentials calculated under §327.E.6 for all qualified Medicaid ambulance service providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38: Subchapter C. Air Transportation

§355. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical air transportation services rendered during the quarter.

B. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to qualify to receive supplemental payments. The ambulance service provider must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider;
3. provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170; and
4. be affiliated with the Statewide Ambulance Service District.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of:

1. the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate; and
2. the difference between the payments made to these qualifying providers for emergency medical transportation and air ambulance services provided to uninsured patients and the average amount that would have been paid at the equivalent community rate.

D. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level. The community rate is defined as the average amount payable by commercial insurers for the same services.

E. Supplemental Payment Calculation. The following methodology shall be used to establish the quarterly supplemental payment for ambulance providers:

1. The department shall identify Medicaid ambulance service providers that were qualified to receive supplemental Medicaid reimbursement for emergency medical transportation services and air ambulance services during the quarter.

2. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

3. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under Paragraph E.2.

4. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the Medicaid ambulance service provider's equivalent

community rate for each of the Medicaid ambulance service provider's services identified under Paragraph E.2.

5. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under Paragraph E.3 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under Paragraph E.4.

6. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under Paragraph E.5.

7. For each Medicaid ambulance service provider described in Paragraph E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from Paragraph B.6.

8. The department will reimburse providers based on the following criteria.

a. For ambulance service providers identified in Paragraph E.1. located in large urban areas and owned by governmental entities, reimbursement will be up to 130 percent of the provider's average commercial rate calculated in Paragraph E.7. Aggregate payment will never exceed the maximum as defined in Subsection H.

b. For all other ambulance service providers identified in Paragraph E.1. reimbursement will be up to 80 percent of the provider's average commercial rate calculated in Paragraph E.7.

9. - 17. Repealed.

F. Calculation of Average Commercial Rate. The supplemental payment will be determined in a manner to bring payments for these services up to the average commercial rate level.

1. For purposes of these provisions, the average commercial rate level is defined as the average amount payable by the commercial payers for the same services.

2. The state will align the paid Medicaid claims with the Medicare fees for each HCPCS or CPT code for the ambulance provider and calculate the Medicare payment for those claims. The state will then calculate an overall Medicare to commercial conversion factor for each ambulance provider by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims. The commercial to Medicare ratio for each provider will be re-determined at least every three years.

G. The supplemental payment will be made effective for air ambulance services provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation may be made annually, but shall not be made less often than every three years.

H. The total amount to be paid by the state to qualified Medicaid ambulance service providers for supplemental

Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under §327.E.6 for all qualified Medicaid ambulance service providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#051

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Non-Emergency Medical Transportation
Public Transit Services
(LAC 50:XXVII.573)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXVII.573 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first. Due to a continuing budgetary shortfall in state fiscal year 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amended the reimbursement methodology governing non-emergency medical transportation (NEMT) services in order to reduce the reimbursement rates (*Louisiana Register*, Volume 37, Number 10).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for the Medical Transportation Program in order to provide Medicaid reimbursement for NEMT services rendered by public transit providers. (*Louisiana Register*, Volume 37, Number 12). This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring continued access to non-emergency medical transportation services.

Effective April 19, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for non-emergency medical transportation services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 5. Non-Emergency Medical Transportation Subchapter D. Reimbursement

§573. Non-Emergency, Non-Ambulance Transportation

A. - E.1. ...

F. Public Transit Services

1. Effective for dates of service on or after December 20, 2011, the Medicaid Program shall provide reimbursement for non-emergency medical transportation services rendered by public transit providers.

2. Qualifying providers shall be reimbursed their cost through a certified public expenditure (CPE) program approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

a. Only public transit providers with local funding available to use for the CPE program shall qualify to receive payments.

3. Public transit providers shall be required to submit a DHH-approved cost report to the department outlining their costs in order to determine payment amounts.

4. Exclusions. Payments shall not be made to public transit providers for NEMT services rendered to Medicaid recipients enrolled in a BAYOU HEALTH prepaid health plan.

5. It is the responsibility of the public transit provider to verify a Medicaid recipient's eligibility status and to determine whether the recipient is enrolled in a BAYOU HEALTH prepaid health plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:879 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:3030 (October 2011), amended LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#060

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Small Rural Hospitals
Low Income and Needy Care Collaboration
(LAC 50:V.5311, 5511, 5711, 5911 and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5311, 5511, 5711, 5911, and 6113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for outpatient hospital services (*Louisiana Register*, Volume 35, Number 5). The Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for outpatient hospital services to provide for a supplemental Medicaid payment to small rural hospitals that enter into an agreement with a state or local governmental entity for the purpose of providing healthcare services to low income and needy patients (*Louisiana Register*, Volume 36, Number 10). The department promulgated an Emergency Rule which amended the provisions of the October 20, 2011 Emergency rule in order to clarify the qualifying criteria (*Louisiana Register*, Volume 37, Number 12). This Emergency Rule is being promulgated to continue the provisions of the December 20, 2011 Emergency Rule. This action is being taken to secure new federal funding and to promote the public health and welfare of Medicaid recipients by ensuring sufficient provider participation in the Hospital Services Program.

Effective April 19, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the October 20, 2011 Emergency Rule governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5311. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient surgery services rendered during the quarter. Maximum aggregate payments to all qualifying

hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A low income and needy care collaboration agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid Disproportionate Share Hospital (DSH) Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5511. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient hospital clinic services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A low income and needy care collaboration agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5711. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient laboratory services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A low income and needy care collaboration agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on the Medicaid paid claims for services rendered during the quarter. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5911. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for outpatient rehabilitation services rendered during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A low income and needy care collaboration agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year. .

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6113. Small Rural Hospitals

A. - B. ...

C. Low Income and Needy Care Collaboration. Effective for dates of service on or after October 20, 2011, quarterly supplemental payments will be issued to qualifying non-state hospitals for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient facility fees during the quarter. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-state hospital must be affiliated with a state or local governmental entity through a low income and needy care collaboration agreement

a. A non-state hospital is defined as a hospital which is owned or operated by a private entity.

b. A low income and needy care collaboration agreement is defined as an agreement between a hospital and a state or local governmental entity to collaborate for purposes of providing healthcare services to low income and needy patients.

2. Each qualifying hospital shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Payments shall be distributed quarterly based on Medicaid paid claims for service dates from the previous state fiscal year. Payments to hospitals participating in the Medicaid DSH Program shall be limited to the difference between the hospital's specific DSH limit and the hospital's DSH payments for the applicable payment period. Aggregate payments to qualifying hospitals shall not exceed the maximum allowable cap for the state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Small Rural Hospitals—Upper Payment Limit
(LAC 50:V.5311, 5511, 5711, 5911, and 6113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5311, 5511, 5711, 5911, and 6113 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 327 of the 2007 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the reimbursement methodology governing state fiscal year 2009 Medicaid payments to small rural hospitals for outpatient hospital services (*Louisiana Register*, Volume 35, Number 5).

Act 883 of the 2010 Regular Session of the Louisiana Legislature directed the department to implement a payment methodology to optimize Medicaid payments to rural hospitals for inpatient and outpatient services. In compliance with the directives of Act 883, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for small rural hospitals to reimburse outpatient hospital services up to the Medicare outpatient upper payment limits (*Louisiana Register*, Volume 36, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 1, 2010 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective March 28, 2012 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for outpatient hospital services rendered by small rural hospitals.

Title 50 PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5311. Small Rural Hospitals

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital surgery services up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5511. Small Rural Hospitals

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient hospital clinic services up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 57. Laboratory Services

Subchapter B. Reimbursement Methodology

§5711. Small Rural Hospitals

A. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for outpatient clinical diagnostic laboratory services up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 59. Rehabilitation Services

Subchapter B. Reimbursement Methodology

§5911. Small Rural Hospitals

A. - A.2.a. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for rehabilitation services up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 61. Other Outpatient Hospital Services

Subchapter B. Reimbursement Methodology

§6113. Small Rural Hospitals

A. - A.2. ...

B. Effective for dates of service on or after August 1, 2010, small rural hospitals shall be reimbursed for services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services, and outpatient hospital facility fees up to the Medicare outpatient upper payment limits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:956 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services

State-Owned Hospitals—Medical Education Payments (LAC 50:V.5319, 5519, 5919 and 6127)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.5319, §5519, §5919 and amends §6127 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions under the Medicaid State Plan to establish a coordinated system of care through an integrated network for the delivery of healthcare services to Medicaid recipients (*Louisiana Register*, Volume 37, Number 6). This delivery system, comprised of managed care organizations (MCOs), was implemented to improve performance and health care outcomes for Medicaid recipients. The per member per month reimbursements to MCOs do not include payments for medical education services rendered by participating hospitals.

Therefore, the department promulgated an Emergency Rule which amended the provisions governing the

reimbursement methodology for outpatient hospital services in order to continue medical education payments to state-owned hospitals when the hospitals are reimbursed by prepaid risk-bearing MCOs for outpatient surgeries, clinic services, rehabilitation services, and other covered outpatient hospital services (*Louisiana Register*, Volume 38, Number 2). The department now proposes to amend the February 1, 2012 Emergency Rule to clarify the provisions governing the reimbursement methodology for outpatient hospital services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation and recipient access to services.

Effective March 20, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 1, 2012 Emergency Rule which established provisions governing the reimbursement methodology for outpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5319. State-Owned Hospitals

A. Effective for dates of service on or after February 1, 2012, medical education payments for outpatient surgery services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be reimbursed by Medicaid annually through the Medicaid cost report settlement process.

1. For purposes of these provisions, qualifying medical education programs are defined as graduate medical education, paramedical education, and nursing schools.

2. Final payment shall be determined based on the actual MCO covered outpatient surgery services and Medicaid medical education costs for the cost reporting period per the Medicaid cost report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5519. State-Owned Hospitals

A. Effective for dates of service on or after February 10, 2012, medical education payments for outpatient clinic services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be reimbursed by Medicaid annually through the Medicaid cost report settlement process.

1. Qualifying medical education programs are defined as graduate medical education, paramedical education, and nursing schools.

2. Final payment shall be determined based on the actual MCO covered outpatient clinic services and Medicaid medical education costs for the cost reporting period per the Medicaid cost report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 59. Rehabilitation Services
Subchapter B. Reimbursement Methodology
§5519. State-Owned Hospitals

A. Effective for dates of service on or after February 10, 2012, medical education payments for outpatient rehabilitation services which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be reimbursed by Medicaid annually through the Medicaid cost report settlement process.

1. Qualifying medical education programs are defined as graduate medical education, paramedical education, and nursing schools.

2. Final payment shall be determined based on the actual MCO covered outpatient rehabilitation services and Medicaid medical education costs for the cost reporting period per the Medicaid cost report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 61. Other Outpatient Hospital Services
Subchapter B. Reimbursement Methodology
§6127. State-Owned Hospitals

A. ...

B. Effective for dates of service on or after February 1, 2012, medical education payments which are reimbursed by a prepaid risk-bearing managed care organization (MCO) shall be reimbursed by Medicaid annually through the Medicaid cost report settlement process to state-owned hospitals for outpatient hospital services other than outpatient surgery services, clinic services, laboratory services, and rehabilitation services.

1. Qualifying medical education programs are defined as graduate medical education, paramedical education, and nursing schools.

2. Final payment shall be determined based on the actual MCO covered outpatient services and Medicaid medical education costs for the cost reporting period per the Medicaid cost report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 35:957 (May 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#048

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pregnant Women Extended Services
Substance Abuse Screening and Intervention Services
(LAC 50:XV.Chapter 163)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 163 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides expanded coverage of certain dental services rendered to Medicaid eligible pregnant women who are in need of periodontal treatment as a means of improving the overall health of mothers and their newborns (*Louisiana Register*, Volume 30, Number 3).

As part of the Department of Health and Hospital's ongoing initiative to improve birth outcomes in the state, the Bureau of Health Services Financing, in collaboration with the Office of Behavioral Health, promulgated and Emergency Rule which adopted provisions to establish Medicaid coverage for substance abuse screening and brief intervention services rendered to Medicaid eligible pregnant women (*Louisiana Register*, Volume 37, Number 4). Research has shown that tobacco dependence and substance abuse intervention programs targeted to pregnant women improves the overall health of the mother and reduces the occurrences of low birth-weight babies and perinatal deaths. It is anticipated that these new services will improve birth outcomes and subsequently reduce Medicaid costs associated with the care of pregnant women and their babies. This Emergency Rule is being promulgated to continue the provisions of the April 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid eligible pregnant women and to reduce the Medicaid costs associated with the care of pregnant women and their babies.

Effective March 29, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing adopts provisions to provide Medicaid coverage of substance abuse screening and brief interventions rendered to Medicaid eligible pregnant women.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 13. Pregnant Women Extended Services
Chapter 163. Substance Abuse Screening and
Intervention Services

§16301. General Provisions

A. Effective for dates of service on or after April 1, 2011, the department shall provide coverage of substance abuse

creening and brief intervention services rendered to Medicaid eligible pregnant women.

B. Substance abuse screening and intervention services may be performed at the discretion of the medical professional providing care to the pregnant woman.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§16303. Scope of Services

A. Screening services shall include the screening of pregnant women for the use of:

1. alcohol;
2. tobacco; and/or
3. drugs.

B. Intervention services shall include a brief 15-30 minute counseling session with a health care professional intended to help motivate the recipient to develop a plan to moderate their use of alcohol, tobacco, or drugs.

C. Service Limits. Substance abuse screening and intervention services shall be limited to one occurrence each per pregnancy, or once every 270 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§16305. Reimbursement Methodology

A. Effective for dates of service on or after April 1, 2011, the Medicaid Program shall provide reimbursement for substance abuse screening and intervention services rendered to Medicaid eligible pregnant women.

B. Reimbursement for these services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#063

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Substance Abuse/Addictive Disorders Facilities
Minimum Licensing Standards
Physical Space Requirements Exemption
(LAC 48:I.7403)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 48:I.7403 in the Medical Assistance Program as authorized by R.S. 36:254

and R.S. 40:1058.1-9. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 655 of the 2003 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services amended the licensing standards for substance abuse/addiction treatment facilities to reflect the national accreditation standards for such facilities (*Louisiana Register*; Volume 31, Number 3).

Act 384 of the 2009 Regular Session of the Louisiana Legislature merged the Office for Addictive Disorders (OAD) with the Office for Mental Health (OMH) to form the Office of Behavioral Health (OBH). Existing licensing provisions for the facilities which came under the authority of OAD and OMH did not allow for the facilities to operate in a common space after OBH was formed. Hence, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health promulgated an Emergency Rule which amended the provisions of the March 20, 2005 Rule governing the minimum licensing standards for substance abuse/addictive disorders facilities in order to allow for an exemption from the physical space requirements for state- or district-owned or operated facilities which operate in or with a state- or district-owned or operated mental health center or mental health clinic. (*Louisiana Register*; Volume 37, Number 12). This action is being taken to promote the health and welfare of patients receiving services in these facilities.

Effective March 31, 2012, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend the provisions governing the minimum licensing standards for substance abuse/addictive disorders facilities.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Chapter 74. Substance Abuse/Addictive Disorders Treatment Facilities

Subchapter A. General Provisions

§7403. Licensing

A. - C.4.f. ...

5. A state- or district-owned or operated substance abuse/addictive disorders facility operating in or with a state- or district-owned or operated mental health clinic shall be exempt from the physical space requirements for operating as separate entities.

a. This exemption shall apply to facilities created under the provisions of R.S. 29:911-920 or R.S. 28:831(c).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:1058.1-9.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 12:26 (January 1986), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 26:1453 (July 2000), LR 31:669 (March 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Behavioral Health

Standards for Community Mental Health
Physical Space Requirements Exemption
(LAC 48:III.537)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend LAC 48:III.537 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 28:567-573. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1), et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Human Resources, Office of Mental Health repromulgated all of the provisions governing the minimum licensing standards and policies for community mental health services rendered by mental health centers and clinics for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 13, Number 4).

Act 384 of the 2009 Regular Session of the Louisiana Legislature merged the Office for Addictive Disorders (OAD) with the Office for Mental Health (OMH) to form the Office of Behavioral Health (OBH). Existing licensing provisions for the facilities which came under the authority of OAD and OMH did not allow for the facilities to operate in a common space after OBH was formed. The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, promulgated an Emergency Rule which amended the provisions of the April 20, 1987 Rule governing the minimum licensing

standards for community mental health centers and mental health clinics in order to allow for an exemption from the physical space requirements for state-or-district-owned or operated facilities which operate in or with a state-or-district-owned or operated substance abuse/addictive disorders facility (*Louisiana Register*, Volume 37, Number 11). This Emergency Rule is being promulgated to continue the provisions of the December 1, 2011 Emergency Rule. This action is being taken to promote the health and welfare of patients receiving services in these facilities.

Effective March 31, 2012 the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health amend the provisions governing the minimum licensing standards for community mental health centers and mental health clinics.

Title 48

PUBLIC HEALTH—GENERAL

Part III. Mental Health Services

Chapter 5. Standards for Community Mental Health Subchapter A. Centers and Clinics

§537. Facilities Management

A. - C. ...

D. Exemption. A state- or district-owned or operated mental health clinic operating in or with a state- or district-owned or operated substance abuse/addictive disorders facility shall be exempt from the physical space requirements for operating as separate entities.

1. This exemption shall apply to facilities created under the provisions of R.S. 29:911-920 or R.S. 28:831(c).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 28:567-573.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Mental Health, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Behavioral Health, LR 38:

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. 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.

Bruce D. Greenstein
Secretary

1203#064

Rules

RULE

**Department of Economic Development
Office of the Secretary
Office of Business Development
and
Louisiana Economic Development Corporation**

Louisiana Seed Capital Program (LSCP) and Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.Chapters 77 and 87)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and as authorized by R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby amend, supplement, expand and re-adopt the rules of the Louisiana Seed Capital Program (LSCP), LAC Title 19, Part VII, Subpart 11, Chapter 77, and to adopt new rules for the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program, LAC 19:VII.Chapter 87.

These amendments supplement and expand certain provisions of and to readopt the rules regarding the Louisiana Seed Capital Program (LSCP) and to create the Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program pursuant to the State Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public law 111-240, 124 Stat. 2568, 2582) adopted by the U.S. Congress. The amendments to the rules supplement, expand and update some of the definitions and other provisions in the rules of the existing program, and new rules are being adopted since no rules currently exist for the new program. These programs will promote economic development in Louisiana, will encourage the formation of Louisiana-based venture capital funds intended to provide investment capital to create and grow start-up and early-stage Louisiana businesses. These programs will be investing in other venture capital funds that in turn invest seed capital in individual Louisiana businesses. This new program will utilize SSBCI funds to make seed-stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. These programs will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of business concerns in Louisiana; will help small businesses grow and expand their businesses; and will provide higher levels of employment, income growth, and expanded economic opportunities in all areas of our state. These programs will further help secure the creation or retention of jobs created by businesses in Louisiana that require state assistance in order to start,

maintain or expand their operations, and/or increase their capital investment in Louisiana. These programs will help to prevent the loss of business investment in this state and the loss of economic development projects that will create economic growth in Louisiana, thereby creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 19

CORPORATIONS AND BUSINESS

Part VII. Louisiana Economic Development Corporation

Subpart 11. Louisiana Seed Capital Program (LSCP) Chapter 77. Louisiana Seed Capital Program (LSCP) §7701. Purpose

A. The purpose of this Louisiana Economic Development Corporation (LEDC) program is to encourage the formation of Louisiana-based seed capital funds (venture capital funds for start-up and early-stage businesses). This program is intended to provide investment capital to create and grow start-up and early-stage businesses. This program will be investing in other venture capital funds that in turn invest seed capital in individual Louisiana businesses. Funding under this program shall be limited to those qualified organizations who agree to invest such funds exclusively in companies based in Louisiana for the purpose of financing any business purpose or process, technique, product, or device which is or may be exploitable commercially, which has advanced beyond the theoretical state, and which is capable of being or has been reduced to practice without regard to whether a patent has or could be granted. This program is not intended for retail or professional services.

B. The LEDC will make the decision as to whether it will invest in the venture capital fund; and the venture capital fund will make the investment decision in eligible individual businesses.

C. The LEDC will provide high-level monitoring of aggregate performance of its portfolio, with monitoring of a small amount of data on each venture capital fund investment; and the venture capital fund will actively monitor each individual business investment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:734 (March 2012).

§7703. Definitions

Board—Board of Directors of Louisiana Economic Development Corporation.

Co-Investment—an investment in which financial investors take part with each other and act jointly by uniting or combining together.

Corporation—Louisiana Economic Development Corporation.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation.

Match Investment—an investment in which a financial investor provides or combines additional funds to equal, meet or complement funds provided by another investor or other investors.

Seed Capital (for the purposes of this program)—

1. a dollar amount of not less than \$25,000 of capital provided to an inventor or entrepreneur to prove a concept and to qualify for start-up capital, which may involve product development and market research, as well as building a management team and developing a business plan, if the initial steps are successful;

2. research and development financing to finance product development for start-up as well as early-stage companies (which may include a company that may already be in business for three years or less);

3. start-up or early-stage financing to companies completing product development and initial marketing which companies may be in the process of organizing or they may already be in business for three years or less, but have sold their product commercially; or

4. first-stage or early-stage financing to companies that have expended their initial capital and require funds to initiate full-scale manufacturing and sales, for costs of inventory, equipment, expansion, modernization, and for working capital purposes.

Venture Capital Fund—also referred to herein as a *seed capital fund*, or the *applicant organization*; a fund that makes and manages a portfolio of investments in individual companies or businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:734 (March 2012).

§7705. Eligibility for Participation in This Program

A. The applicant organization must be a Louisiana-based venture capital fund organized for the purpose of making seed capital investments in Louisiana businesses.

B. The applicant organization may be organized either for profit or non-profit purposes.

C. The applicant organization must demonstrate that its management personnel have at least three years of experience in managing investments in individual, privately-held companies, utilizing funds provided by others to make such investments.

D. The applicant organization must have a minimum cash investment already on hand sufficient to cover the general and administrative costs for the first and early years of its operations.

E. The applicant organization must have already raised a minimum of \$250,000 to be eligible for co-investments or raised a minimum of \$500,000 to be eligible for a match investment; and must have already on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in this program. The minimum funds may be in cash and commitments.

F. The applicant organization must verify the eligibility of portfolio companies, obtain assurances of eligibility from each business, and assurances from each business that proceeds will be used for acceptable business purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:735 (March 2012).

§7707. Application Requirements for Qualification or Eligibility, and for Co-Investment

A. Prior to a seed capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) to be considered for a commitment for a co-investment, a prospective seed capital fund must first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering two main categories, including:

1. the experience and qualifications of the fund's existing or proposed management team; and

2. the business plan for the seed capital fund. The following provisions specify in more detail the information that should be covered. While these provisions provide a possible format, the applicant should in no way feel bound by this format. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should feel free to provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for qualification will then be submitted to the next scheduled LEDC board screening committee or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full Board of Directors of LEDC at its next scheduled meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit résumés, references, and private placement memoranda for all principal members of the management team that are identified;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team.

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any of these people are not full-time management team members, describe their other activities;

3. describe the responsibilities of any principal management position for which a person has not been identified;

4. specify any directors that have been identified, and submit their resumes;

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit résumés and/or descriptions of firms;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

6. provide evidence of the initial \$250,000 minimum capital required for the applicant fund's eligibility to participate in this program.

D. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. targeted market:
 - a. describe and discuss the types of businesses that the seed capital fund will finance. Discuss the extent to which the seed capital fund intends to specialize in certain industries, or whether a more broad based approach is planned;
 - b. describe the size range of businesses that it is contemplated the seed capital fund will finance, with a general indication of where most of the focus is expected;
 - c. discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated;
 - d. discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices;
 - e. provide any market analysis that the applicant deems relevant;
2. financing. Describe and discuss the financing instruments that are intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments;
3. marketing strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance;
4. screening process and evaluation criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment;
5. fee income. Discuss the potential for fee income, and any plans that the seed capital fund might have for generating fee income;
6. management assistance. Discuss the plans of the seed capital fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in;
7. complementary relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalists and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed;
8. management structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team;

9. idle funds. Describe plans for the management of the idle funds of the seed capital fund;

10. tax and accounting issues. Discuss relevant tax and accounting issues for the seed capital fund;

11. financial projections:

- a. provide a detailed operating budget for the first three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis;

- b. provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item;

- c. specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions;

- d. specify computer programs used for projections, and specify formulas used.

E. If the applicant fund has been found to be qualified or eligible to participate in this program by the LEDC board of directors, the application for the qualified applicant's co-investment project shall contain, but shall not be limited to, the identical information provided to the eligible seed capital fund requesting the co-investment. The LEDC or its staff may request additional information beyond that which has been provided. After its receipt and review by the LEDC staff, the completed application for the qualified applicant's co-investment project shall then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2251 (October 2000), amended LR 38:735 (March 2012).

§7709. Application Requirements for Qualification or Eligibility, and for Match Investment

A. Prior to a seed capital fund submitting a request to the Louisiana Economic Development Corporation (LEDC) to be considered for a commitment for a match investment, a prospective seed capital fund shall first submit an application for the applicant fund to be considered qualified or eligible to participate in this program. The application for the fund's qualification or eligibility to the LEDC shall consist of detailed information covering three main categories, including:

1. the experience and qualifications of the Fund's existing or proposed management team;

2. if applicable, the fund's fund raising abilities, activities and success; and

3. the business plan for the seed capital fund. The following provisions specify in more detail the information that should be covered. While these provisions provide a possible format, the applicant should in no way feel bound

by this format. The applicant can use its own format, as long as the basic information is provided. Moreover, the applicant should feel free to provide additional information which is viewed as relevant. The LEDC or its staff may request additional information beyond that which is specified below and what is provided by the applicant.

B. After its receipt and review by the LEDC staff, the completed application for a match investment will then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

C. Experience and Qualifications. In or with its application, the applicant shall:

1. submit resumes, references, and private placement memoranda for all principal members of the management team that are identified;

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of the members of the management team.

2. describe the responsibilities of each of the principal members of the management team that have been identified. If any of these people are not full-time management team members, describe their other activities;

3. describe the responsibilities of any principal management position for which a person has not been identified;

4. specify any directors that have been identified, and submit their resumes;

5. specify any other key people that have been identified, including any advisors, consultants, attorneys and accountants, and submit resumes and/or descriptions of firms.

NOTE: Louisiana Economic Development Corporation reserves the right to perform criminal background checks on any or all of these key people.

D. Fund Raising. In or with its application, the applicant shall:

1. specify the amount of LEDC commitment sought;

2. provide evidence of the amount of private capital that has been raised, and specify the ratio of actual cash to commitments raised;

3. describe the basic legal structure of the seed capital fund;

4. if applicable, describe and discuss the applicant's fund raising strategy for the raising of any additional private capital;

5. if applicable, specify the principal investor sources that the applicant fund will be targeting;

6. if applicable, provide the applicant's basic proposal to its prospective private investors, and the expectations and objectives the applicant is specifying. This shall include, for example, representations regarding reasonably expected returns on private equity investment, indirect financial benefits, if any, and social purposes, if applicable;

7. list all specific investors and financing commitments already obtained, including documentation for each. This shall include evidence of the initial \$500,000 minimum capital required for the applicant fund's eligibility to participate in this program;

8. specify whether applicant anticipates taking in all of the LEDC equity investment at closing, or whether

applicant plans a phase in. If a phase-in is planned, specify the proposed schedule. It is permissible to have different scenarios based on the actual amount of equity capital raised.

E. Business Plan. In its application, and with regard to the subjects mentioned below, the applicant shall:

1. targeted market:

a. describe and discuss the types of businesses that the seed capital fund will finance. Discuss the extent to which the seed capital fund intends to specialize in certain industries, or whether a more broad based approach is planned;

b. describe the size range of businesses that it is contemplated the seed capital fund will finance, with a general indication of where most of the focus is expected;

c. discuss the life cycle stage or stages of the companies which the seed capital fund will likely finance, with an indication of where most of the focus is contemplated;

d. discuss the geographic area in which the seed capital fund plans to focus. Specify the city or parish in which the seed capital fund's principal office is planned to be located, and discuss intentions, if any, to establish any additional offices;

e. provide any market analysis that the applicant deems relevant;

2. financing. Describe and discuss the financing instruments that are intended to be used by the seed capital fund. Discuss the anticipated mix of the various types of financing instruments. Discuss the anticipated size range of investments to be made, and information regarding pricing, term, and other conditions. Discuss risk/return expectations on projects. Discuss methods of exit from investments;

3. marketing strategy. Describe the seed capital fund's plans and approach to marketing its services, including the identification of potential applicants for financing assistance;

4. screening process and evaluation criteria. Discuss the anticipated number of business firms that will be reviewed for possible investment, in comparison with the number that will actually be invested in. Discuss the approach to screening business firms, and the evaluation criteria for deciding whether, and under what terms and conditions, to provide investment;

5. fee income. Discuss the potential for fee income, and any plans that the seed capital fund might have for generating fee income;

6. management assistance. Discuss the plans of the seed capital fund to provide management and/or technical assistance to companies for which the seed capital fund provides investment. Discuss the seed capital fund's plans for monitoring its investments, and enforcing provisions of investment agreements. Discuss how the seed capital fund plans to handle problem investments. Discuss the seed capital fund's plans to provide management assistance to companies that the seed capital fund is not investing in;

7. complementary relationships. Discuss the nature of complementary relationships that are anticipated with banks, commercial lenders, investment bankers, venture capitalist and other institutions. This discussion can be based on general types of institutions and/or can identify specific institutions where complementary relationships have already been discussed;

8. management structure. Describe the proposed or existing management structure for the seed capital fund, and anticipated compensation for principal members of the management team;

9. idle funds. Describe plans for the management of the idle funds of the seed capital fund;

10. tax and accounting issues. Discuss relevant tax and accounting issues for the seed capital fund;

11. financial projections:

a. provide a detailed operating budget for the first or for the next three years of the seed capital fund's operation. The first year shall be month by month. The second and third years may be presented on an annual basis;

b. provide performance projections, year by year, for a five year period. These projections should show cash flow, income and expense (including taxes), and balance sheet data. For these performance projections, operating expenses can be consolidated into one line item;

c. specify the assumptions used for the performance projections. It is permissible to submit several sets of performance projections based on differing assumptions. However, if applicant submits several sets of projections based on differing assumptions, specify which set of assumptions are applicant's primary assumptions;

d. specify computer programs used for projections, and specify formulas used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2253 (October 2000), amended LR 38:736 (March 2012).

§7711. Application Process

A. All applications under this program must be submitted to the Executive Director, Louisiana Economic Development Corporation, P.O. Box 44153, Baton Rouge, 70804.

1. Application Requirements for Qualification or Eligibility to Participate in this Program and Co-Investment Application or Match Investment Application

a. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the co-investment project may be, but are not required to be, submitted simultaneously for consideration.

b. The application for qualification or eligibility of the seed capital fund to participate in this program and its application for the match investment project may be, but are not required to be, submitted simultaneously for consideration.

c. Once a seed capital fund is deemed qualified or eligible to participate in this program, the fund is not required to resubmit a qualification or an eligibility application for subsequent co-investment or match investment requests.

2. All applications received by LEDC will be reviewed by the LEDC staff; and the staff may request additional information beyond that which has been provided.

After their receipt and review by the LEDC staff, the completed applications shall then be submitted to the next scheduled LEDC board screening committee meeting or other board designated committee meeting for recommendations. The recommendations of the committee will be submitted to the full board of directors of LEDC at its next scheduled meeting for its consideration of final approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:738 (March 2012).

§7713. Investments

A. Co-Investment

1. A qualified or eligible fund that has not received a match investment from the LEDC may apply for co-Investment funds on a case by case basis. The co-investment of LEDC shall not exceed the lesser of 50 percent of the total round of investment needed or \$250,000.

2. Only investments in Louisiana businesses are eligible for co-investments.

3. Co-investments will be on the same terms and conditions as the seed capital fund has negotiated with the business included in the co-investment project.

B. Match Investment.

1. A qualified or eligible fund may receive a match investment equal to \$1 of LEDC funds for each \$2.00 of funds privately raised by the applicant fund. The maximum LEDC match investment in an eligible fund shall not exceed \$1,000,000.

2. A qualified or eligible fund shall be a Louisiana organized and based seed capital fund. For purposes of this program, *organized and based* means the seed capital applicant fund is registered with the Louisiana Secretary of State's office, and that it maintains a staffed office in Louisiana where investments may be initiated and closed.

3. Match investment funds may be used only for Louisiana businesses.

4. The method of LEDC's investment into the qualified or eligible fund will be equal to the method of investment of the other investors into that fund, i.e., committed capital for committed capital, cash investment for cash investment, or cash and commitment for cash and commitment.

5. The terms of each match investment will be negotiated by LEDC on a case by case basis.

C. Closing

1. Prior to the disbursement of funds, the secretary-treasurer of LEDC and any one of the following: either the chairman of the board, the president, or the executive director of LEDC, shall execute all necessary legal instruments after certification by legal counsel that all appropriate legal requirements have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:738 (March 2012).

§7715. Reporting

A. Each year, on the anniversary date of the initial disbursement of funds, or on such date as may be authorized by LEDC, each venture capital fund that is the recipient of LEDC funds shall provide to LEDC the following information:

1. a list of all investors in the fund, including the amounts of each investment and the nature of each investment;

2. a statement of the financial condition of the fund including, but not limited to, a balance sheet, a profit and loss statement, and a statement showing changes in the fund's financial condition;

3. a current reconciliation of the fund's net worth; and

4. an annual audited financial statement prepared by a certified public accountant (prepared within 120 days of the end of the fund's fiscal year).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 26:2254 (October 2000), amended LR 38:739 (March 2012).

Chapter 87. Seed Capital Program for the State Small Business Credit Initiative (SSBCI) Program

§8701. Purpose

A. The purpose for this Chapter 87 Program shall be the same as the purposes previously provided in §7701 of Chapter 77 of Subpart 11 of the Louisiana Seed Capital Program which shall also apply to this Chapter 87 program; and additionally this Chapter 87 program is to establish the Louisiana Seed Capital Program for the federal program entitled the "State Small Business Credit Initiative (SSBCI) Program" and to accommodate the requirements of this federal program. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds to make seed stage investments to create and grow start-up and early-stage businesses or for expansion of small businesses statewide, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform venture capital funds, local foundations, small businesses, trade associations, incubator associations, and economic development organizations of the program, and to generate increased small business activity, awareness of and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The marketing will also be used to find investment and seed investment opportunities located in the underserved markets that will be targeted with SSBCI funds. The LEDC will also monitor these plans, including the progress of individual businesses receiving investments and the performance of participating venture capital organizations, to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups. This program is not intended for retail or professional services.

B. The LEDC wishes to maintain for this Chapter 87 program all of the purposes of §7701 and all of the other Sections and provisions of Chapter 77 of the seed capital

program shown above, except where there is a need for the policies of this program to be different from Chapter 77. For this reason, all of the Sections and provisions of Chapter 77 above shall also apply to this Chapter 87, except in those instances where a different or additional rule or policy is provided below in this Chapter 87.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:739 (March 2012).

§8703. Definitions

A. All of the same definitions provided in §7703 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:739 (March 2012).

§8705. Eligibility for Participation in This Program

A. Except as may be hereinafter provided, all of the eligibility provisions contained in §7705 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 Program, except that co-investments will not be utilized in this Chapter 87 program.

B. The applicant organization must have raised a minimum of \$500,000 in investments or has a minimum of \$2 1/2 Million under management, and already on hand cash sums sufficient to cover the general and administrative costs for the first and early years of its operations for participation in the SSBCI Match Investment Program.

C. In addition to the eligibility provisions provided in the Section mentioned in the above Subsection A, LEDC investments made in venture capital funds and programs in connection with this Chapter 87 program shall meet the following criteria:

1. the venture capital fund(s) shall target an average business-size of 500 employees or less at the time the individual business investment is made;

2. such individual business investments shall not be extended to businesses with more than 750 employees;

3. any investment targeted in this Program shall not exceed the amount of \$ 5,000,000; and

4. any investment extended through this Program shall not exceed the amount of \$ 20,000,000.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:739 (March 2012).

§8707. Application Requirements for Qualification or Eligibility, and for Co-Investment

A. None of the provisions contained in §7707 of Chapter 77 of the seed capital program shall apply to this Chapter 87 program. The co-investment provisions of Chapter 77 will not be utilized in this SSBCI Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:739 (March 2012).

§8709. Application Requirements for Qualification or Eligibility, and for Match Investment

A. Except as may be hereinafter provided, all of the provisions contained in §7709 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 Program. Only match investments will be utilized in this SSBCI Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:740 (March 2012).

§8711. Application Process

A. Except as may be hereinafter provided, all of the provisions contained in §7711 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 program. Co-investments will not be utilized in this Chapter 87 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:740 (March 2012).

§8713. Investments

A. Except as may be hereinafter provided, all of the provisions contained in §7713 of Chapter 77 of the Seed Capital Program shall also apply to this Chapter 87 program, except that co-investments will not be utilized in this Chapter 87 program. Only match investments will be utilized in this SSBCI Chapter 87 Program.

B. A qualified or eligible fund may receive a match investment equal to \$1 of LEDC funds for each \$1.50 of funds privately raised by the applicant fund. The maximum LEDC match investment in an eligible fund shall not exceed \$1,000,000.

C. LEDC investments made in a qualified seed capital fund will not exceed an initial investment of \$450,000, with two expected follow-up investments, but not to exceed a total investment of \$1,000,000 per fund.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:740 (March 2012).

§8715. Reporting

A. Except as may be hereinafter provided, all of the provisions contained in §7715 of Chapter 77 of the seed capital program shall also apply to this Chapter 87 Program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:740 (March 2012).

Stephen M. Moret
Secretary

1203#046

RULE

**Department of Economic Development
Office of the Secretary
Office of Business Development
and**

Louisiana Economic Development Corporation

Small Business Loan and Guaranty Program (SBL and GP) and State Small Business Credit Initiative (SSBCI) Program (LAC 19:VII.Chapters 1 and 3)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Business Development, and the Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and as authorized by R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby amend, supplement, expand and re-adopt the rules of the Small Business Loan and Guaranty Program (SBL and GP) provided in LAC Title 19: Part VII, Subpart 1, Chapter 1, and to adopt new rules for the State Small Business Credit Initiative (SSBCI) Program, LAC Title 19: Part VII, Subpart 1, Chapter 3.

These amendments supplement and expand certain provisions of and to readopt the rules regarding the Small Business Loan and Guaranty Program (SBL&GP) and create the State Small Business Credit Initiative (SSBCI) Program pursuant to the State Small Business Credit Initiative Act of 2010 (Title III of the Small Business Jobs Act of 2010, Public law 111-240, 124 Stat. 2568, 2582) adopted by the U.S. Congress. The amendments to the rules supplement, expand and update some of the definitions and other provisions in the rules of the existing program, and new rules are being adopted since no rules currently exist for the new program. These programs will promote economic development in Louisiana, will stimulate the flow of capital and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana; will help them grow and expand their businesses; and will provide higher levels of employment, income growth, and expanded economic opportunities, especially for small business enterprises in all areas of our state, including distressed and rural areas. These programs will further help secure the creation or retention of jobs created by small businesses in Louisiana that require state assistance in order to start, maintain or expand their operations, and/or increase their capital investment in Louisiana. These programs will help to prevent the loss of small business investment in this state and economic development projects that will create economic growth in Louisiana, thereby creating or retaining jobs that would improve the standard of living and enrich the quality of life for citizens of this state.

Title 19
CORPORATIONS AND BUSINESS
Part VII. Louisiana Economic Development
Corporation

Subpart 1. Small Business Loan and Guaranty Program
(SBL and GP)

Chapter 1. Loan and Guaranty Policies for the Small
Business Loan and Guaranty Program
(SBL and GP)

§101. Purpose

A. The Louisiana Economic Development Corporation (LEDC) wishes to stimulate the flow of private capital, medium to long-term loans, lines of credit loans, loan guaranties, loan participations and other financial assistance for the sound financing of the development, expansion, and retention of small business concerns in Louisiana, as a means of helping them grow and expand their businesses and of providing higher levels of employment, income growth, and expanded economic opportunities, especially to small and emerging businesses and disabled person business enterprises and within distressed and rural areas of our State.

B. The corporation will consider sound business loans, lines of credit, loan guaranties and loan participations so long as resources permit. The board of directors of the corporation recognizes that lending money, granting lines of credit, guaranteeing loans or participating in loans carries certain risks and is willing to undertake reasonable exposure.

C. LEDC will monitor the program, including the repayment progress of borrowers, as well as the servicing performance of participating lenders.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:445 (June 1989), re-promulgated LR 23:40 (January 1997), amended LR 26:2255 (October 2000), LR 38:741 (March 2012).

§103. Definitions

Board—Board of Directors of Louisiana Economic Development Corporation.

Borrower—also referred to herein as the *applicant/borrower* or *customer/borrower*; the business person or entity borrowing and accepting the loaned funds from the lender.

Corporation—Louisiana Economic Development Corporation.

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

Financial Institution—also referred to herein as a *bank*, *financial lending institution*, *lending institution*, *commercial lending entity*, or *lender*; includes any insured depository institution, insured credit union, or community development financial institution, as those terms are defined in §103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702).

Lead Lender—the bank or other lender that makes or originates the loan with the borrower.

LED—Louisiana Department of Economic Development.

LEDC—Louisiana Economic Development Corporation.

Lender—also referred to herein as the *applicant/lender*; the financial institution originating the loan and providing the loan funds to the borrower.

Line of Credit—the maximum amount of loan credit that a borrower is allowed to borrow over a period of time, whereby funds may be borrowed, provided or extended in various amounts over the agreed term, repaid or partially repaid by the borrower, and which funds may be re-extended by the lender to the borrower and repaid by the borrower over the agreed term of the credit.

Loan—the temporary provision of money or funds for a business purpose, usually for a limited term and requiring the payment of interest along with the repayment of the loaned funds. As used herein, the word *loan* includes a line of credit loan, loan guaranty and loan participation.

Loan Guaranty or *Guarantee*—an agreement to pay the loan of another borrower, up to any limit in the amount guaranteed as provided in the agreement, in case the original borrower defaults in or is unable to comply with his repayment obligation.

Loan Participation—an agreement to participate as a lender in a loan or to acquire from the lender a share or ownership interest in a loan. A *purchase participation* or *purchase transaction* is one in which the state purchases a portion of a loan originated by a lender; and a *companion loan*, a *parallel loan*, or a *co-lending participation* is one in which the lender originates a loan and the state originates a second loan to the same borrower. (In the latter case, the state's second loan may be subordinate or co-equal to the first loan originated by the lender.) *Loan Participations* enable the state to act as a lender, in partnership with a financial institution lender, to provide small business loans at attractive terms.

Permanent Full-Time Jobs—refers to direct jobs which are not contract jobs, that are permanent and not temporary in nature, requiring employees to work an average of 30 or more hours per week.

Small and Emerging Business—a Louisiana business certified as a *small and emerging business* (SEB) by the Louisiana Department of Economic Development's Community Outreach Services.

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

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR23:40 (January 1997), amended LR 26:2255 (October 2000), LR 38:741 (March 2012).

§105. Application Process

A. Any applicant/borrower(s) applying for either a loan, line of credit, loan guaranty or loan participation will be required first to contact a financial lending institution (a bank or other commercial lending entity) that is willing to entertain, originate, process and service such a loan or line of credit with the prospect of a guaranty or a participation, and the lender will then contact LEDC for qualification and shall submit a complete application to LEDC for review and approval. The financial institution shall also be responsible for obtaining assurances of eligibility from each borrower.

B. Information submitted to LEDC with the application representing the applicant's/borrower's business plan,

financial position, financial projections, personal financial statements and background checks will be kept confidential to the extent allowed under the Louisiana Public Records Law, R.S. 44:1 et seq. Confidential information in the files of LEDC and its accounts acquired in the course of its duty will be used solely by and for LEDC.

C. The following submission and review policies shall be followed.

1. A completed Louisiana Economic Development Corporation application form must be submitted to LEDC.

2. Small and emerging businesses (SEBs) applying for assistance under that provision will have to submit a copy of the certification from the Louisiana Department of Economic Development's community outreach services, along with the request for financial assistance.

3. Businesses applying for consideration under the disabled person's business enterprise provision shall submit adequate information to support the disabled status.

4. The applicant/lender shall submit to LEDC its complete analysis and evaluation, proposed loan structure, and commitment letter to the borrower. LEDC staff may do its own analysis and evaluation of the application, independent of the lending institution's analysis and evaluation.

5. The applicant/lender shall submit to LEDC the same pertinent data that it submitted to the lending institution's loan committee, whatever pertinent data the lending institution can legally supply.

6. LEDC staff will review the application and analysis, and then make recommendations. The staff will work with the applicant/lender on terms of the loan, including interest rate, maturity, collateral, other loan terms, and any LEDC loan stipulations or requirements.

7. The LEDC's board screening committee or the board's other designated committee will review only the completed applications submitted by LEDC staff and may approve or disapprove applications within its authority as established by the LEDC board, or will make recommendations to the LEDC board.

8. The applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution are not required to attend the board screening committee or other designated committee meeting unless requested by LEDC or its staff to do so.

9. The applicant/borrower(s) or their designated representative, and the loan officer or a representative of the lending institution shall be required to attend the LEDC's Board of Directors meeting wherein the application will be considered by the board.

10. LEDC's board of directors, the board screening committee, or the board's other designated committee that has considered the application within its authority has the final approval authority for such applications.

11. The applicant/borrower or the lending institution will be notified within five working days by mail or e-mail of the outcome of the application process.

12. An LEDC commitment letter, including LEDC's terms, and any stipulations or requirements, will be mailed or e-mailed by LEDC staff to the lending institution within five working days of approval by the LEDC board or its committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department Economic Development, Louisiana Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:40 (January 1997), LR 26:2255 (October 2000), LR 38:741 (March 2012).

§107. Eligibility/Ineligibility for Participation in This Program

A. In connection with the business purpose for the requested loan, applicant/borrower(s) shall create in this state at least two new permanent full-time jobs.

B. The following businesses shall be eligible for participation in this program, except for those ineligible businesses and purposes hereinafter shown:

1. small business concerns domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident(s) of Louisiana;

2. certified small and emerging businesses (SEBs);

3. disabled person's business enterprises domiciled in Louisiana whose owner(s) or principal stockholder(s) shall be a resident(s) of Louisiana; or

4. funding requests for any business purpose may be considered, except for the following ineligible businesses or purposes:

a. restaurants (except for regional or national franchises), including grills, cafes, fast food operations, motorized vehicle, trailer, curb-side or sidewalk or street vendor food operations, and any other business or project established for the principal purpose of dispensing cooked food for consumption on or off the premises;

b. bars, packaged liquor stores, including any other business or project established for the principal purpose of dispensing alcoholic beverages;

c. any business or establishment which has gaming or gambling as its principal business;

d. any business or establishment which has consumer or commercial financing as its business;

e. funding for the acquisition, renovation, or alteration of a building or property for the principal purpose of real estate speculation, rental, or any other passive real estate investment purposes;

f. funding for the principal purpose of refinancing existing debt;

g. funding for the purpose of buying out any stockholder or equity holder by another stockholder or equity holder in a business;

h. funding for the purpose of establishing a park, theme park, amusement park, or camping facility; or

i. funding for the purpose of buying out any family member or reimbursing any family member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:41 (January 1997), LR 26:2255 (October 2000), LR 38:742 (March 2012).

§109. General Loan, Credit, Guaranty and Participation Provisions

A. The Louisiana Economic Development Corporation will be guided by the following general principles in making loans or approving lines of credit, loan guaranties or loan participations.

1. The corporation shall confirm that the financial institution lender has sufficient commercial lending experience and financial and managerial capacity to

participate in this program. The corporation may utilize, among other resources, the financial institution's most recent call report showing the percentage of commercial loans in its portfolio.

2. The corporation shall not knowingly approve any loan, line of credit, loan guarantee or loan participation if the applicant/borrower has presently pending or outstanding any claim or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness, state or federal taxes, or a bankruptcy proceeding; nor shall the corporation approve any loan, line of credit, loan guarantee or participation if the applicant/borrower has presently pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit or any legal proceeding involving a criminal violation other than misdemeanor traffic violations. Further, the corporation shall not approve any loan, line of credit, loan guarantee or participation if the applicant/ borrower or his/her/its principle management has a criminal record showing convictions for any criminal violations other than misdemeanor traffic violations.

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

4. Each financial institution lender shall be required to have a meaningful amount of its own capital resources at risk in each small business loan included in this Program. Such lenders shall bear at least 25 percent or more of the loss from a small business loan default.

5. The corporation shall not subordinate its position to other creditors.

B. Interest Rates

1. On all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed 5 percent per annum above New York prime as published in the *Wall Street Journal* at either a fixed or variable rate.

2. On all participation loans, the rate shall be determined by utilizing the rate for a U.S. Government Treasury security for the time period that coincides with the term of the participation and adding between 1 and 5 percentage points.

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

C. Collateral

1. The collateral-to-loan ratio will be no less than one-to-one (1:1).

2. The collateral position may be negotiated, but it shall be no less than a sole second position.

3. Collateral Value Determination

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

b. The appraisal cannot be more than 90 days old.

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

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

b. equipment, machinery, inventory;

c. personal guarantees may be used only as additional collateral and will not count toward the 1:1 coverage; if used, signed and dated personal financial statements of the guarantors must also be submitted to LEDC;

d. accounts receivable with supporting aging schedule; but not to exceed 80 percent of receivable value (to be used with personal guarantee only).

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

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

b. personal items or personal real estate;

c. intangibles.

D. Equity Requirements

1. Equity required will be 20 percent of the loan or line of credit amount for a start-up operation or acquisition, and no less than 15 percent for an expansion. However, if 20 percent is not available for a guarantee the following chart may be applied which provides for a guarantee fee attached to a lesser equity position.

Equity %	Guarantee Fee
19 %	2.20 %
18 %	2.40 %
17 %	2.60 %
16 %	2.80 %
15 %	3.00 %
14 %	3.20 %
13 %	3.40 %
12 %	3.60 %
11 %	3.80 %
10 %	4.00 %

*In no case shall the equity position be less than ten (10%) percent.

2. Equity is defined to be:

a. cash;

b. paid-in capital;

c. paid-in surplus and retained earnings; or

d. partnership capital and retained earnings.

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

E. Limit on the Amount of LEDC's Guarantee

1. For small business loans, the corporation's loan guarantee shall be:

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

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

c. no greater than 65 percent of a loan of up to \$2,300,000; or

d. if the loan request exceeds \$2,300,000, the guaranty shall not exceed \$1,500,000.

2. For certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guarantee shall be:

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

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

c. no greater than 75 percent of a loan of up to \$2,000,000; or

d. if the loan request exceeds \$2,000,000, the guaranty shall not exceed \$1,500,000.

3. For small businesses, the corporation's loan participation shall be no greater than 40 percent, but in no case shall it exceed \$1,500,000.

4. For certified small and emerging businesses, or disabled person's business enterprises, the corporation's loan participation shall be no greater than 50 percent, but in no case shall it exceed \$1,000,000.

F. Terms

1. Maturity, collateral, and other loan terms shall be negotiated between the borrower and the applicant/lending institution, but line of credit loans shall not exceed five years and term loans shall not exceed seven years. The LEDC shall have an opportunity to approve the terms of such loans prior to the closing.

G. LEDC Fees

1. LEDC will charge a guaranty fee not to exceed a maximum amount of 4 percent on the guaranteed loan amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. LEDC will charge a \$100 application fee, unless the board, the board screening committee or other designated committee waives the application fee.

3. LEDC will share in a pro-rata position in any fees assessed by the lender on a loan participation.

H. Use of Loan Funds (including line of credit, guaranty and participation funds)

1. Loan funds may be used for business purposes, including but not limited to the purchase of fixed assets, including buildings that will be occupied by the applicant/borrower to the extent of at least 51 percent.

2. Loan funds may be used for the purchase of equipment, machinery, or inventory.

3. Loan funds may be used for a line of credit for accounts receivable or inventory.

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

a. exceeds 25 percent of the total loan, with the following exception:

i. a maximum of 35 percent may be considered on a guaranteed loan, but the guaranteed percentage will be decreased by 5 percent;

b. pays off a creditor or creditors who are inadequately secured;

c. provides funds to pay off a debt to principals of the borrower business; and/or

d. provides funds to pay off family members.

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

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:41 (January 1997), LR 26:2256 (October 2000), LR 38:742 (March 2012).

§111. General Agreement Provisions

A. Guaranty Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan or line of credit, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

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

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

4. There will be a reduction of the guaranty:

a. in proportion to the principal reduction of the amortized portion of the loan or line of credit;

b. if no principal reduction has occurred in any annual period of the loan or line of credit, a reduction in the guaranty amount will be made proportional to the remaining guaranty life.

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

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

B. Participation Agreement

1. The lending institution shall conduct all of the customer/borrower interaction, and shall be responsible for the proper administration and monitoring of the loan, including monthly invoicing, collections, and loan workouts, and the proper liquidation of the collateral in the event of a default.

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

3. The lead lender may sell other participations with LEDC's consent.

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

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

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

C. Borrower Agreement

1. At the discretion of LEDC, the borrower will agree to strengthen management skills by participation in a form of continuing education acceptable to LEDC.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development

Corporation, LR 15:448 (June 1989), amended LR 23:42 (January 1997), LR 26:2257 (October 2000), LR 38:744 (March 2012).

§113. Confidentiality

A. Confidential information in the files of the corporation and its accounts acquired in the course of its duty is to be used solely for the corporation. The corporation is not obliged to give out any credit rating or confidential information regarding the applicant/borrower (see Louisiana Attorney General's Opinion #82-860).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:453 (June 1989), amended LR 23:43 (January 1997), LR 26:2257 (October 2000), LR 38:745 (March 2012).

§115. Conflict of Interest

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 15:453 (June 1989), amended LR 23:43 (January 1997), LR 26:2258 (October 2000), LR 38:745 (March 2012).

Chapter 3. Loan and Guaranty Policies for the State Small Business Credit Initiative (SSBCI) Program

§301. Purpose

A. The purposes for this Chapter 3 program shall be the same as the purposes previously provided in Section 101 of Chapter 1 of the Small Business Loan and Guaranty Program which shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program); and additionally this Chapter 3 program is to establish loan and guaranty policies for the federal program entitled the State Small Business Credit Initiative (SSBCI) Program and to accommodate the requirements of this federal program. The Louisiana Economic Development Corporation (LEDC) will utilize SSBCI funds to increase access to credit and capital funding to further assist small businesses statewide, to expand loan capabilities to include a broader range of businesses statewide, to direct a greater concentration on those small businesses, and to reach, identify and promote small business growth in low and moderate income communities, in minority communities, in other underserved communities, and to women- and minority-owned businesses. This LEDC program and the SSBCI funding will be marketed through outreach activities to inform lenders, small businesses and trade associations of the program, and to generate increased small business activity, awareness and access to additional sources of capital to start and expand existing business opportunities, as well as participation in the program. The LEDC will also monitor these plans, including the repayment progress of borrowers, the servicing performance of participating

lenders, and to ensure successful outcomes in the form of program utilization and eventual securing of funds for these groups.

B. The LEDC wishes to maintain for this Chapter 3 Program all of the purposes of §101 and all of the other Sections and provisions of Chapter 1 of the Small Business Loan and Guaranty Program shown above, except where there is a need for the policies of this Program to be different from Chapter 1. For this reason, all of the Sections and provisions of Chapter 1 above shall also apply to this Chapter 3, except in those instances where a different or additional rule or policy is provided below in this Chapter 3.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:745 (March 2012).

§303. Definitions

A. All of the same definitions provided in Section 103 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:745 (March 2012).

§305. Application Process

A. Except as may be hereinafter provided, all of the provisions contained in §105 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. Loan Purpose Requirements and Prohibitions. In addition to the application process provisions provided in the Section mentioned in the above Subsection A, in connection with each loan to be enrolled under this Chapter 3 program the financial institution lender shall also be responsible for obtaining and providing to LEDC with the lender's application an assurance from each borrower stating that the loan proceeds shall not be used for any impermissible purpose under the SSBCI Program. And additionally, each financial institution lender must also obtain and provide to LEDC with its application under this Chapter 3 program an assurance from the borrower affirming:

1. the loan proceeds must be used for a business purpose. A *business purpose* includes, but is not limited to, start up costs, working capital, business procurement, franchise fees, equipment, inventory, as well as the purchase, construction renovation or tenant improvements of an eligible place of business that is not for passive real estate investment purposes. The definition of *business purpose* excludes activities that relate to acquiring or holding passive investments such as commercial real estate ownership, the purchase of securities; and lobbying activities as defined in section 3 (7) of the Lobbying Disclosure Act of 1995, P.L. 104-65, as amended;

2. the loan proceeds will not be used to:

a. repay a delinquent federal or state income taxes unless the borrower has a payment plan in place with the relevant taxing authority; or

b. repay taxes held in trust or escrow, e.g. payroll or sales taxes; or

c. reimburse funds owed to any owner, including any equity injection or injection of capital for the business' continuance; or

d. purchase any portion of the ownership interest of any owner of the business;

3. the borrower is not:

a. an executive officer, director, or principal shareholder of the financial institution lender; or

b. a member of the immediate family of an executive officer, director, or principal shareholder of the financial institution lenders; or

c. a related interest of an such executive officer, director, principal shareholder, or member of the immediate family;

i. for the purposes of these three borrower restrictions, the terms *executive officer*, *director*, *principal shareholder*, *immediate family*, and *related interest* refer to the same relationship to a financial institution lender as the relationship described in part 215 of title 12 of the Code of Federal Regulations, or any successor to such part;

4. the borrower is not:

a. a business engaged in speculative activities that develop profits from fluctuations in price rather than through normal course of trade, such as wildcatting for oil and dealing in commodities futures, unless those activities are incidental to the regular activities of the business and part of a legitimate risk management strategy to guard against price fluctuations related to the regular activities of the business;

NOTE: Permissible borrowers include state-designated charitable, religious, or other non-profit or eleemosynary institutions, government-owned corporations, consumer and marketing cooperatives, and faith-based organizations provided the loan is for a "business purpose" as defined above.

b. a business that earns more than half of its annual net revenue from lending activities; unless the business is a non-bank or non-bank holding company certified as a community development financial institution; or

c. a business engaged in pyramid sales, where a participant's primary incentive is based on the sales made by an ever-increasing number of participants; or

d. a business engaged in activities that are prohibited by federal law or applicable law in the jurisdiction where the business is located or conducted (Included in these activities is the production, servicing, or distribution of otherwise legal products that are to be used in connection with an illegal activity, such as selling drug paraphernalia or operating a motel that knowingly permits illegal prostitution.); or

e. a business engaged in gambling enterprises, unless the business earns less than 33 percent of its annual net revenue from lottery sales;

5. no principal of the borrowing entity has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]. For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each managing partner and each partner who is a natural person and holds a 20 percent or more ownership interest in the partnership; and if a corporation, limited liability company, association or a development company, each director, each of the five most

highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

C. The financial institution lender must also provide to LEDC with its application, in connection with each loan to be enrolled under this Chapter 3 program, an assurance affirming:

1. the loan has not been made in order to place under the protection of the approved state Capital Access Program (CAP) prior debt that is not covered under the approved state CAP and that is or was owed by the borrower to the financial institution lender or to an affiliate of the financial institution lender;

2. the loan is not a refinancing of a loan previously made to that borrower by the financial institution lender or an affiliate of the financial institution lender;

3. no principal of the financial institution lender has been convicted of a sex offense against a minor [as such terms are defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)]. For the purposes of this certification, *principal* is defined as if a sole proprietorship, the proprietor; if a partnership, each partner; if a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers, or employees of the entity, and each direct or indirect holder of 20 percent or more of the ownership stock or stock equivalent of the entity.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:745 (March 2012).

§307. Eligibility/Ineligibility for Participation in This Program

A. Except as may be hereinafter provided, all of the provisions contained in §107 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. In addition to the eligibility and ineligibility provisions provided in the Section mentioned in the above Subsection A, applicant/borrowers and loans, lines of credit and loan guarantees in connection with this Chapter 3 program shall meet the following criteria:

1. the applicant/borrower(s) shall employ 500 employees or less at the time the loan is enrolled in this program;

2. this credit support shall not be extended to applicant/borrower(s) that have more than 750 employees;

3. any loan supported in this program shall not exceed a principal amount of \$5,000,000;

4. any credit extended through this program shall not exceed a principal amount of \$20,000,000;

5. SSBCI funds utilized in this Chapter 3 program will be permitted only for new extensions of credit; that is, funds of the SSBCI Program shall not be used to support existing extensions of credit, including but not limited to prior loans, lines of credit or other borrowing, that were previously made

available as part of a state small business credit enhancement program; and

6. Small Business Administration (SBA) guaranteed loans shall not be purchased in loan participations through this program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:746 (March 2012).

§309. General Loan, Credit, Guaranty and Participation Provisions

A. Except as may be hereinafter provided, all of the provisions contained in §109 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

B. Interest Rates

1. On all loan or line of credit guarantees, the interest rate is to be negotiated between the borrower and the lender, but shall not exceed 5 percent per annum above New York prime as published in the *Wall Street Journal* at either a fixed or variable rate.

C. Equity Requirements

1. To qualify for this Chapter 3 program, the borrower must infuse not less than 15 percent into the equity in an existing or expanding business, or not less than 20 percent into the equity of a start-up operation or an acquisition.

D. Limit on the Amount of LEDC's Guaranty

1. In connection with loans included in this Chapter 3 program, for certified small and emerging business loans, or disabled person's business enterprise loans, the corporation's loan guaranty shall be:

a. no greater than 75 percent of a loan of up to \$2,000,000; or

b. if the loan request exceeds \$2,000,000, the guaranty shall not exceed \$1,500,000.

E. Terms

1. For loans included in this Chapter 3 program, the term of line of credit loans and term loans shall not exceed three years.

F. LEDC Fees

1. In connection with loans and guaranties included in this Chapter 3 program, LEDC will charge a guaranty fee not to exceed a maximum amount of 2 percent of the guaranteed loan amount, unless the board, the board screening committee or other designated committee waives the guaranty fee.

2. In connection with loans and guaranties included in this Chapter 3 program, LEDC will charge no application fee.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:747 (March 2012).

§311. General Agreement Provisions

A. Except as may be hereinafter provided, all of the provisions contained in §111 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this

Chapter 3 program (except that loan participations will not be utilized in this Chapter 3 program).

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:747 (March 2012).

§313. Confidentiality

A. All of the provisions contained in §113 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:747 (March 2012).

§315. Conflict of Interest

A. All of the provisions contained in §115 of Chapter 1 of the Small Business Loan and Guaranty Program shall also apply to this Chapter 3 program.

AUTHORITY NOTE: Promulgated in accordance with LA. R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 38:747 (March 2012).

Stephen M. Moret
Secretary

1203#045

RULE

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices (LAC 28:CXI.305, 312, and 501)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 118—Statewide Assessment Standards and Practices*: §305. Test Security Policy, §312. Administrative Error, and §501. District Test Coordinator Role. These revisions will provide new and updated statewide test information and provide easy access to that information. It was necessary to revise the bulletin at this time to incorporate new and edited policy guidelines in the statewide assessment programs Chapter 3, Test Security, and Chapter 5, Test Coordinator Responsibilities. New policy language, updates, and edits were made to chapters 3 and 5.

Title 28

EDUCATION

Part CXI. Bulletin 118 Statewide Assessment Standards and Practices

Chapter 3. Test Security

§305. Test Security Policy

A. - A.2.f ...

g. Recovery School District. The RSD district test coordinator has oversight over and is responsible for all tasks indicated in Chapter 5, Subchapter A, for all schools in RSD including but not limited to:

- i. all directly served RSD schools; and
- ii. all RSD charter schools (Type 5).

h. participating nonpublic/other schools that utilize tests administered through the SBESE or the LDE.

3. - 4.g ...

h. procedures for ensuring the security of individual student test data in electronic and paper formats—including encryption of student demographics in any email correspondence;

i. to the extent practicable, procedures to assign a different test administrator for a class than the teacher of record for the class, except for teachers testing students with accommodations and younger students, grades 3 through 8;

j. procedures for monitoring of test sites to ensure that appropriate test security procedures are being followed and to observe test administration procedures.

5. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:391.7 (C) (G).

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 31:1528 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 33:424 (March 2007), LR 33:2033 (October 2007), LR 34:65 (January 2008), LR 34:431 (March 2008), LR 34:1351 (July 2008), LR 35:217 (February 2009), LR 37:858 (March 2011), repromulgated LR 37:1123 (April 2011), amended LR 38:747 (March 2012).

§312. Administrative Error

A. - G.3. ...

H. LEAs have the right to appeal to SBESE to replace the voided or invalid scores with the results from the administrative error retests for accountability purposes. The appeal must include a description of the testing irregularity; a summary of the LEA's investigation including who conducted the investigation; the findings of the investigation; and a corrective action plan. After review of the submitted documentation by LDOE, the state superintendent will make a recommendation to SBESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 32:390 (March 2006), amended LR 33:257 (February 2007), LR 34:66 (January 2008), LR 34:1351 (July 2008), LR 35:218 (February 2009), LR 36:967 (May 2010), LR 38:748 (March 2012).

Chapter 5. Test Coordinator Responsibilities

Subchapter A. District Test Coordinator

§501. District Test Coordinator Role

A.1. - A.2.d. ...

e. coordinating with the district Section 504 coordinator the submission of student Section 504 data to the student information system (SIS);

f. - x.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR

31:1533 (July 2005), amended LR 33:258 (February 2007), LR 34:1352 (July 2008), LR 34:2552 (December 2008), repromulgated LR 35:57 (January 2009), amended LR 35:218 (February 2009), LR 38:748 (March 2012).

Catherine R. Pozniak
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1203#024

RULE

Board of Elementary and Secondary Education

Bulletin 119—Louisiana School Transportation
Specifications and Procedures
(LAC 28:CXIII.303, 307, 501, 1901, 2501, and 2507)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 119—Louisiana School Transportation Specifications and Procedures*: §303. Certification of School Bus Drivers, §307. Retaining School Bus Drivers, §501. Driver Training Program, §1901. Transporting Eligible Students, §2501. Responsibility of Dealers and Manufacturers, and §2507. Lease of School Buses. The policy revisions to Chapter 3, §303. Certification of School Bus Drivers, further clarify which individuals are considered school bus drivers other than employees hired by the school board and revisions to §307. Retaining School Bus Drivers, adds a legislative policy based on Act No. 533 of the 2010 Regular Legislative Session, which amends R.S. 17:491.3 and 3996(B)(24) regarding the reporting of an arrest for a violation of any law or ordinance that prohibits operating a school bus while under the influence of alcohol or any abused substance or controlled dangerous substance. The required report shall apply to an arrest occurring after December 31, 2010.

Policy revisions to Chapter 5, §501. Driver Training Program, adds provisions to ensure that any person who is employed by a private entity that has contracted with the school district to provide student transportation services are trained.

Policy revisions to Chapter 19, §1901. Transporting Eligible Students, eliminates discrepancies and inconsistencies as it relates to transportation of students who resides one mile or less from the school when the school board determines that conditions exist to warrant such transportation.

Policy revisions to Chapter 25, §2501. Responsibility of Dealers and Manufacturers, amends the responsibilities of purchasers of schools buses and proposed revisions to §2507. Lease of School Buses, amends the policy on the leasing of school buses for transporting students and to add: school bus may be used by the school district to transport students on an assigned bus route and/or for activity trips.

Title 28
EDUCATION

**Part CXIII. Bulletin 119—Louisiana School
Transportation Specifications and Procedures**

**Chapter 3. Selection and Employment of School Bus
Drivers and Attendants (Aides)**

§303. Certification of School Bus Drivers

A. The term *school bus drivers* included in this Section includes anyone who is certified to transport students to and from school and school-related activities. Full-time drivers, substitute drivers (including bus attendants who may also be certified to drive in emergency situations), activity bus drivers (teachers, coaches, custodians, etc.), and any other person who is employed by the school district or by a private entity that has contracted with the school district to provide student transportation services and who at any time transports students must be certified prior to transporting students.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587, R.S. 17:15, R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, R.S. 17:432, R.S. 17:491, R.S. 17:493, R.S. 17:497, R.S. 17: 691, R.S. 32:52, R.S. 32:402, R.S. 32:408, R.S. 32:417, and R.S. 40:963, et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:628 (April 1999), amended LR 36:1467 (July 2010), LR 37:2122 (July 2011), LR 38:749 (March 2012).

§307. Retaining School Bus Drivers

A. - C.2. ...

D. Effective January 1, 2011, and thereafter, in accordance with the terms of R.S. 17:491.3 and 3996(B)(24), a school bus operator shall report his arrest for a violation of any law or ordinance that prohibits operating a vehicle while under the influence of alcohol or any abused substance or controlled dangerous substance.

E. The report shall be made by the operator to a person or persons as specified by the governing authority of the school in rules and regulations required by this Section. Such report shall be made within 24 hours of the arrest or prior to the operator next reporting for his work assignment as a school bus operator, whichever time period is shorter. Such report shall be made by the school bus operator regardless of who owns or leases the vehicle being driven by the operator at the time of the offense for which he was arrested and regardless of whether the operator was performing an official duty or responsibility as a school bus operator at the time of the offense.

F. The required report shall apply to an arrest occurring after December 31, 2010.

1. A school bus operator who fails to comply with the provisions of this Section shall be terminated by the governing authority employing the operator if such operator is serving a probationary term of employment or if the provisions of law relative to probation and tenure of bus operators are not applicable to the operator.

2. A school bus operator employed by a city, parish, or other local public school board who is a regular and permanent employee of the board shall be subject to removal for failure to comply with the provisions of this Section. Written and signed charges alleging such failure shall be brought against the bus operator.

E. The governing authority of each public elementary or secondary school shall adopt rules, regulations, and procedures necessary to administer these provisions. Such rules, regulations, and procedures shall be consistent with these provisions.

F. For the purposes of this Section, *school bus operator* means any employee of a city, parish, or other local public school board or other governing authority of a public elementary or secondary school whose duty it is to transport students in any school bus or activity bus to and from a school approved by the state Board of Elementary and Secondary Education or to and from any school-related activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166, and R.S. 17:493.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:642 (April 1999), amended LR 36:1468 (July 2010), LR 37:2122 (July 2011), LR 38:749 (March 2012).

**Chapter 5. Instructional Program for School Bus
Drivers**

§501. Driver Training Program

A. - C.2. ...

D. LEAs must ensure that all school bus drivers, including any school board employee who drives a bus on an occasional basis to transport students to and from school activities and any person who is employed by a private entity that has contracted with the school district to provide student transportation services, have attended in-service training not less frequently than once every other school year.

E. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:630 (April 1999), amended LR 36:1468 (July 2010), LR 37:2122 (July 2011), LR 38:749 (March 2012).

Chapter 19. Transporting Students

§1901. Transporting Eligible Students

A. ...

1. A city, parish, or other local public school board may provide transportation for any student attending a school of suitable grade approved by the state Board of Elementary and Secondary Education within the jurisdictional boundaries of the local board who resides one mile or less from the school when the school board determines that conditions exist to warrant such transportation. Transportation of students residing one mile or less from their school shall be at no cost to the state.

2. Conditions that exist and warrant transportation of a student who resides one mile or less from the school may include but shall not be limited to the residence location of a person convicted of a sex offense and registered as a sex offender, sexually violent predators, and child predators.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:634 (April 1999), amended LR 36:1476 (July 2010), LR 38:749 (March 2012).

Chapter 25. Purchase, Sale, Lease, and Repair of School Buses

§2501. Responsibility of Dealers and Manufacturers

A. The responsibility of compliance with school bus specifications rests with the vendors, manufacturers and purchasers of school buses.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999), amended LR 36:1479 (July 2010), LR 38:750 (March 2012).

§2507. Lease of School Buses

A. LEAs may lease a school bus owned by any school bus operator employed by the LEA or with whom the LEA has contracted to provide transportation services for students from the school bus operator or by a business who is authorized by the state of Louisiana to sell, lease or operate school buses in the state.

B. The school bus shall be used by the operator to transport students on the operator's assigned bus route, or the school bus may be used by the school district to transport students on an assigned bus route and/or for activity trips.

C. Lease agreements must follow state regulations as described in R.S. 17:158 and R.S. 17:158.7.

D. Lease agreements must specify that every bus included in the lease have been inspected and certified to meet all applicable standard and statutory requirements as enumerated or otherwise referenced in this document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1479 (July 2010), amended LR 38:750 (March 2012).

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1203#025

RULE

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools
(LAC 28:CXXXIX.Chapters 1, 5-19, 27, and 39)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 126—Charter Schools: Chapters 1, 5-19, 27, and 39*. This Rule will ensure the greater effectiveness of charter schools throughout the state. Additionally, during the 2011 Regular Legislative Session, several charter school bills were passed into law. The laws allowed for authorizers to grant extended or shortened opening timelines for approved charters, remove requirements regarding the months a school may open, corporate partnerships with charter schools, the allowance of residential charter schools, and for applications to be revised and resubmitted as part of the application process.

Title 28

EDUCATION

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 1. General Provisions

§103. Definitions

A. - F. ...

G. *Management Organization*—a for-profit company that manages academic, fiscal, and operational services on behalf of boards of directors of BESE-authorized charter schools through contractual agreements.

H. - V. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3973.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1357 (July 2008), amended LR 37:867 (March 2011), LR 37:2383 (August 2011), LR 38:37 (January 2012), LR 38:750 (March 2012).

Chapter 5. Charter School Application and Approval Process

§512. Application Process for Locally Authorized Charter Schools

A. - A.2. ...

3. Prior to the consideration of a charter school proposal by any local school board, each charter applicant shall be afforded the opportunity to revise and resubmit the proposal based on the independent evaluation of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 37:869 (March 2011), amended LR 38:750 (March 2012).

§513. Stages of Application Cycle for BESE-Authorized Charter Schools

A. - G. ...

H. Prior to the consideration of a charter school proposal by BESE, each charter applicant shall be afforded the opportunity to revise and resubmit the proposal based on the independent evaluation of the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1361 (July 2008), amended LR 37:869 (March 2011), LR 38:750 (March 2012).

§515. Charter School Application Components

A. - D.48. ...

49. a description of any proposed corporate partnerships as specified in Chapter 39 of this bulletin.

E. - H.11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1362 (July 2008), amended LR 37:869 (March 2011), LR 37:2383 (August 2011), LR 38:38 (January 2012), LR 38:750 (March 2012).

§517. Consideration of Charter Applications and Awarding of Charters by BESE

A. ...

B. BESE shall consider each Type 5 charter school application that is recommended by the State Superintendent of Education, based on a recommendation by the Office of

Parental Options and the recovery school district, and may vote to approve or deny the recommended application.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:870 (March 2011), LR 38:750 (March 2012).

Chapter 7. Charter School Performance Contract

§701. Charter School Contract with BESE

A. ...

B. The charter school contract shall define the performance standards to which the charter school will be held accountable and the general terms and conditions under which the charter school will operate. The charter school contract template shall include, but not be limited to, provisions regarding the establishment of the charter school; the operation of the charter school; charter school financial matters; charter school personnel; charter term, renewal and revocation; and other provisions determined necessary by BESE. The charter school contract shall also include exhibits that provide detailed information about the terms and conditions under which the school will operate, including but not limited to, the pre-opening requirements; student discipline policy; student enrollment; and management organization contract.

C. ...

D. Any contracts entered into between a charter operator and a management organization shall:

1. set forth material terms including but not limited to: performance evaluation measures; methods of contract oversight and enforcement by the charter school board; compensation structure and all fees to be paid to the management organization; and conditions for contract renewal and termination;

2. contain provisions relative to the submission of documents, including but not limited to student records and financial information, upon request and in a timely manner. The contract shall specify that any documents not provided by a management organization to the charter operator must be reported by the charter operator to the department. If such documents are financial documents, the department shall notify BESE and the Office of the Louisiana Legislative Auditor. Failure to comply with requests for documents may render the management organization ineligible to contract with any BESE-authorized charter school as a management organization for up to five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:2385 (August 2011), LR 38:751 (March 2012).

Chapter 9. Opening of Charter School

§901. Timeline for Charter School Opening

A. A charter school shall begin operation by not later than 24 months after the final approval of the charter, unless such charter school is engaged in desegregation compliance issues and, therefore, must begin operation by not later than 36 months. However, upon request, the chartering authority may extend the time period within which any charter school must begin operation.

B. ...

C. A charter school other than a Type 5 shall not begin operation sooner than eight months after approval of the charter school has been granted, unless the chartering authority agrees to a lesser time period.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3983.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:870 (March 2011), LR 37:2385 (August 2011), LR 38:751 (March 2012).

Chapter 11. Ongoing Review of Charter Schools

§1101. Charter School Evaluation

A. - E.6. ...

F. Legal and Contract Performance

1. BESE shall evaluate a charter school's performance based on the Department of Education's oversight and monitoring of the charter school's compliance with its statutory, regulatory, and contractual obligations and all reporting requirements. Type 5 charter schools will be subject to oversight in these areas by the department and the recovery school district, which shall regularly report findings to the Office of Parental Options.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1363 (July 2008), amended LR 37:871 (March 2011), repromulgated LR 37:1124 (April 2011), amended LR 37:2385 (August 2011), LR 38:751 (March 2012).

Chapter 13. Charter Term

§1303. Third Year Review

A. ...

B. Each Type 2, Type 4, and Type 5 charter school's comprehensive report and its third year evaluation shall be used to determine if the school will receive a two-year extension, as follows.

1. Contract Extension

a. Each charter school shall provide a comprehensive report to its chartering authority at the end of the third year, to be considered in addition to the academic, financial, and legal and contractual performance data collected by the Office of Parental Options or the recovery school district for the charter school's first three years. If such report and performance data reveal that the charter school is achieving the following goals and objectives, the board shall, by January of the school's fourth year, permit the charter school to complete the remainder of its initial five-year term:

a.i. - b. ...

2. Schools That Fail to Meet Extension Standards

a. If a charter school fails to meet any of the standards set forth in Paragraph B.1 of this Section, BESE may, at the superintendent's recommendation, take one of the following actions based on information provided by the Office of Parental Options and the recovery school district, if the school is a Type 5 charter school:

2.a.i. - 3.b.i. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1367 (July 2008), amended LR 37:2387 (August 2011), LR 38:751 (March 2012).

Chapter 15. Charter Renewal

§1503. Charter Renewal Process and Timeline

A. - E.1. ...

2. Not later than January of the charter school's fifth year, the state superintendent of education will make a recommendation to BESE about the disposition of any school whose contract is up for renewal. The basis for the recommendation will be the charter school's student, financial, and legal and contractual performance during years one through four of the charter contract.

3. Based on the school's academic, financial, and contractual performance, the state superintendent of education may recommend one of three actions:

E.3.a. - F.2. ...

3. Not later than January of the charter school's final contract year, the state superintendent of education will make a recommendation to BESE about the disposition of any school whose contract is up for renewal. The basis for the recommendation will be the charter school's student, financial, legal and contractual performance during its current charter contract.

4. Based on the school's academic, financial, and legal and contractual performance over the current charter contract term, the superintendent may recommend one of the following actions:

F.4.a. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981 and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:479 (March 2010), amended LR 37:871 (March 2011), LR 37:2388 (August 2011), LR 38:752 (March 2012).

Chapter 17. Revocation

§1703. Revocation Proceedings

A. Recommendation to Revoke Charter for BESE-Authorized Charter Schools

1. A recommendation to revoke a charter shall be made to BESE by the state superintendent of education based on information provided by the Office of Parental Options and the recovery school district, if the school is a Type 5 charter school, at least one BESE meeting prior to the BESE meeting at which the recommendation may be considered, except as otherwise provided herein when the health, safety, and welfare of students is at issue.

2. Prior to the BESE meeting at which the superintendent of education will make a recommendation that BESE commence a revocation proceeding, the Department of Education will inform the charter operator that it is requesting such and the reasons therefor and may meet with the charter operator, upon request, to discuss the revocation recommendation.

3. Following the state superintendent of education's recommendation to revoke a charter, BESE shall determine if it will commence a revocation proceeding.

A.4. - G.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10) and R.S. 17:3981.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1368 (July 2008), amended LR 37:872 (March 2011), LR 38:752 (March 2012).

Chapter 19. Amendments to BESE-Authorized Charters

§1903. Material Amendments for BESE-Authorized Charter Schools

A. A material amendment to a charter is an amendment that makes substantive changes to a charter school's governance, operational, or academic structure. Material amendments include:

1. changes in legal status or management, including the structure of the governing board, or assignment of or changes in management organization;

A.2. - D. ...

E. BESE shall delegate authority to the Department to approve a material amendment regarding Paragraphs A.3 and A.4 of this Section for any charter school meeting—the following conditions, as determined by the department:

1. - 3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3992.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1369 (July 2008), amended LR 37:873 (March 2011), LR 37:2389 (August 2011), LR 38:752 (March 2012).

Chapter 27. Charter School Recruitment and Enrollment

§2701. Students Eligible to Attend

A. - D. ...

E. Beginning with the 2011-2012 school year, each elementary and middle charter school, other than a Type 2 charter school, may request from and be granted by its chartering authority the authority to give preference in its enrollment procedures to students residing within the neighborhood immediately surrounding the school. The geographic boundaries of the neighborhood immediately surrounding such school shall be determined by the school's chartering authority. The recovery school district may grant or assign preference in its unified enrollment process, described in §2709 of this bulletin, to students residing within geographic boundaries immediately surrounding each school, as determined by the recovery school district. Type 5 charter schools shall not reserve more than 50 percent of spots in each grade level served for such enrollment preference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3973, R.S. 17:3981, R.S. 17:10.5, R.S. 17:10.7, and R.S. 17:1990.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1373 (July 2008), amended LR 37:875 (March 2011), LR 37:2390 (August 2011), LR 38:752 (March 2012).

§2707. Application Period

A. ...

B. A student application period shall not be less than one month nor more than three months.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:752 (March 2012).

§2709. Enrollment of Students, Lottery, and Waitlist

A. - F. ...

G. Any charter school not participating in the recovery school district's unified enrollment system in Paragraph J of this Section shall maintain a waitlist of applicants not admitted to the charter school as a result of capacity being reached in a program, a grade, or the school.

G.I. - I. ...

J. Type 5 charter schools and traditional public schools in Orleans Parish transferred to the recovery school district pursuant to R.S. 17:10.5 and R.S. 17:10.7 shall comply with any unified enrollment system established by the recovery school district. Other charter schools located within Orleans Parish may participate in the unified enrollment system upon approval by their charter boards. Other traditional public schools in Orleans Parish may participate in the unified enrollment system upon approval by the local school board. The recovery school district may create any policies and procedures to implement a unified enrollment system not prohibited by this chapter, and may conduct one or more central lotteries to enroll students at participating schools, and enroll students applying or requesting transfers after the application period has ended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 34:1374 (July 2008), amended LR 38:753 (March 2012).

Chapter 39. Corporate Partnerships

§3901. Corporate Partnerships and Enrollment

A. Notwithstanding geographic or other requirements for enrollment contained in this bulletin, a charter agreement may provide, initially or by amendment, for the enrollment of and an enrollment preference for dependent children of permanent employees of a corporate partner.

B. Up to 50 percent of the school's maximum enrollment may be reserved for the enrollment of such children.

C. The charter agreement shall specify both the school's maximum enrollment and the maximum proportion set aside for implementation of this enrollment preference.

D. An enrollment preference established as part of the corporate partnership defined in this Chapter shall not be implemented in a way that displaces children enrolled at the school at the time the charter agreement or amendment providing for the preference is authorized.

E. Enrollment at the school shall otherwise be as provided by this Chapter except that the requirement of R.S. 17:3991(B)(1)(a)(i) shall apply to and be based upon only students who are not dependent children of permanent employees of a corporate partner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:753 (March 2012).

§3903. Requirements for Corporate Partnerships

A. A corporate partner is any legal entity, whether for profit or not for profit, registered with the secretary of state, except a corporation identified in R.S. 18:1505.2(L)(3), that has, acting individually or as part of a consortium of corporations, donated one or more of the following to the school:

1. the land on which the school is built;
2. the school building or the space the school occupies. If the corporate partner is leasing the building or space to the school, the enrollment preference or board membership may only be provided in the charter agreement if the lease provides that the building or space is made available without cost and if the term of the lease is not less than the duration of the charter agreement;

3. major renovations to the existing school building or other capital improvements including major investments in technology.

B. For purposes of this Chapter, a major renovation to the existing school building means changes that provide significant opportunities for substantial improvement including but not limited to:

1. a structural change to the foundation, roof, floor, or interior or exterior walls or extension of an existing facility to increase its floor area;

2. an extensive alteration of an existing facility, such as a change in its function or purpose, even if such renovation does not include any structural change to the facility.

C. A major investment in technology includes but is not limited to a donation of:

1. hardware;
2. software;
3. internet access;
4. internet hardware;
5. enterprise systems;
6. software licenses;
7. smart board technology; or
8. audiovisual equipment.

D. The value of a major renovation or of an investment of technology shall be equal to at least 50 percent of the per pupil allocation of state funds by the minimum foundation program formula for that year for the parish in which the school is located multiplied by the school's enrollment as defined in the charter agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:753 (March 2012).

§3905. Corporate Partner Representation on Charter Boards

A. A charter agreement may provide, initially or by amendment, for a corporate partner to have representation on its governing or management board; however, such representation may not constitute a majority of the board. Such membership is subject to all other provisions of law except any contrary provision in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:3981, and R.S. 17:3991.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:753 (March 2012).

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RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook
for School Administrators
(LAC 28: CXV.2317, 2318, 2325, 2345, 2351, and 2353)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2317. High Schools, §2318. The College and Career Diploma, §2325. Advanced Placement and International Baccalaureate, §2345. Foreign Languages, §2351. Journalism, and §2353. Mathematics. These policy revisions correct formatting errors, provide more course-taking options for students, and clarify some language in the policy. These revisions were requested by districts and schools.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2317. High Schools

A. - H.4. ...

I. Prior to the beginning of the school year, students in the college and career diploma pathway may switch to the career diploma pathway provided they meet the following requirement.

1. Every student who seeks to pursue a career diploma shall have the written permission of his/her parent or other legal guardian on the career diploma participation form after a consultation with the school guidance counselor or other school administrator. The student and parent must be informed of the advantages and disadvantages of the different diploma pathways. The signature of the student and parent or guardian indicates that a determination has been made that the pursuit of a career diploma is appropriate and in the best interest of the student. The school principal shall also sign the form acknowledging that appropriate counseling has taken place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:154; R.S. 17:1944; R.S. 17:1945.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 36:1485 (July 2010), LR 37:1137 (April 2011), LR 38:754 (March 2012).

§2318. The College and Career Diploma

A. - B.7.a. ...

C. Minimum Course Requirements

1. For incoming freshmen prior to 2008-2009, the minimum course requirements for graduation shall be the following.

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. English—4 units:

- i. English I;
- ii. English II;
- iii. English III*;
- iv. English IV* or Business English or Senior Applications in English.

b. Mathematics—3 units:

i. effective for incoming freshmen 2005-2006 to 2007-2008:

(a) all students must complete one of the following:

- (i). Algebra I (1 unit); or
- (ii). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2

units); or

(iii). Integrated Mathematics I (1 unit).

(b) The remaining unit(s) shall come from the following:

- (i). Integrated Mathematics II;
- (ii). Integrated Mathematics III;
- (iii). Geometry;
- (iv). Algebra II;
- (v). Financial Mathematics;
- (vi). Advanced Math—Pre-Calculus;
- (vii). Advanced Math—Functions and

Statistics;

- (viii). Pre-Calculus*, Calculus*;
- (ix). Probability and Statistics*;
- (x). Math Essentials; and
- (xi). Discrete Mathematics.

c. Science—3 units:

- i. 1 unit of Biology*;
- ii. 1 unit from the following physical science

cluster:

- (a). Physical Science;
- (b). Integrated Science;
- (c). Chemistry I,
- (d). Physics I*;
- (e). Physics of Technology I;
- iii. 1 unit from the following courses:
 - (a). Aerospace Science;
 - (b). Biology II*;
 - (c). Chemistry II*;
 - (d). Earth Science;
 - (e). Environmental Science*;
 - (f). Physics II*;
 - (g). Physics of Technology II;
 - (h). Agriscience II;
 - (i). an additional course from the physical science cluster; or

(j). a locally initiated science elective;

iv. students may not take both Integrated Science and Physical Science;

v. Agriscience I is a prerequisite for Agriscience II and is an elective course.

d. Social Studies—3 units:

- i. U.S. History*;
- ii. Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise; and

iii. one of the following:

- (a). World History*;
- (b). World Geography*;
- (c). Western Civilization*;
- (d). AP European History.

e. Health Education—1/2 unit.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

- g. Electives—8 units.
- h. Total—23 units.

2. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana basic core curriculum, the minimum course requirements for graduation shall be the following:

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

- a. English—4 units:
 - i. English I;
 - ii. English II;
 - iii. English III*;
 - iv. English IV* or Senior Applications in English.
- b. Mathematics—4 units:

i. all students must complete one of the following:

- (a). Algebra I (1 unit);
- (b). Applied Algebra I (1 unit); or
- (c). Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units).

ii. Geometry or Applied Geometry;

iii. the remaining unit(s) shall come from the following:

- (a). Algebra II;
- (b). Financial Mathematics;
- (c). Math Essentials;
- (d). Advanced Math—Pre-Calculus;
- (e). Advanced Math—Functions and Statistics;
- (f). Pre-Calculus*;
- (g). Calculus*;
- (h). Probability and Statistics*;
- (i). Discrete Mathematics; or
- (j). a locally initiated elective approved by BESE as a math substitute.

c. Science—3 units:

- i. 1 unit of Biology*;
- ii. 1 unit from the following physical science

cluster:

- (a). Physical Science;
- (b). Integrated Science;
- (c). Chemistry I*;
- (d). Physics I*;
- (e). Physics of Technology I;
- iii. 1 unit from the following courses:

- (a). Aerospace Science;
- (b). Biology II*;
- (c). Chemistry II*;
- (d). Earth Science;
- (e). Environmental Science*;
- (f). Physics II*;
- (g). Physics of Technology II;
- (h). Agriscience II;
- (i). Anatomy and Physiology;
- (j). ChemCom;

(k). an additional course from the physical science cluster; or

(l). a locally initiated elective approved by BESE as a science substitute;

iv. students may not take both Integrated Science and Physical Science;

v. Agriscience I is a prerequisite for Agriscience II and is an elective course.

d. Social Studies—3 units:

- i. U.S. History*;
- ii. Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

iii. 1 of the following:

- (a). World History*;
- (b). World Geography*;
- (c). Western Civilization*;
- (d). AP European History.

e. Health Education—1/2 unit:

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Electives—8 units:

i. shall include the minimum courses required to complete a career area of concentration for incoming freshmen 2010-2011 and beyond.

(a). The Area of Concentration shall include one unit of Education for Careers or Journey to Careers.

h. Total—124 units.

3. For incoming freshmen in 2008-2009 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following.

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

a. English—4 units:

- i. English I;
- ii. English II;
- iii. English III*;
- iv. English IV*.

b. Mathematics—4 units

i. Algebra I, Applied Algebra I, or Algebra I-Pt. 2;

ii. Geometry or Applied Geometry;

iii. Algebra II;

iv. the remaining unit shall come from the following:

- (a). Financial Mathematics;
- (b). Math Essentials;
- (c). Advanced Math—Pre-Calculus;
- (d). Advanced Math—Functions and Statistics;
- (e). Pre-Calculus*;
- (f). Calculus*;
- (g). Probability and Statistics*;
- (h). Discrete Mathematics;
- (i). AP Calculus BC, or
- (j). a locally initiated elective approved by BESE as a math substitute.

c. Science—4 units:

- i. one unit of Biology*;
- ii. one unit of Chemistry*;
- iii. two units from the following courses:

- (a). Physical Science;
- (b). Integrated Science;
- (c). Physics I*;
- (d). Physics of Technology I;
- (e). Aerospace Science;
- (f). Biology II*;
- (g). Chemistry II*;
- (h). Earth Science;
- (i). Environmental Science;
- (j). Physics II*;
- (k). Physics of Technology II;
- (l). Agriscience II;
- (m). Anatomy and Physiology; or
- (n). a locally initiated elective approved by

BESE as a science substitute.

iv. Students may not take both Integrated Science and Physical Science;

v. Agriscience I is a prerequisite for Agriscience II and is an elective course;

vi. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among the primary courses in the student's area of concentration for the fourth required science unit:

- (a). Advanced Nutrition and Foods;
- (b). Food Services II;
- (c). Allied Health Services II;
- (d). Dental Assistant II;
- (e). Emergency Medical Technician-Basic (EMT-B);
- (f). Health Science II;
- (g). Medical Assistant II;
- (h). Sports Medicine III;
- (i). Advanced Electricity/Electronics;
- (j). Process Technician II;
- (k). ABC Electrical II;
- (l). Computer Service Technology II;
- (m). Horticulture II;
- (n). Networking Basics;
- (o). Routers and Routing Basics;
- (p). Switching Basics and Intermediate Routing;
- (q). WAN Technologies;
- (r). Animal Science;
- (s). Biotechnology in Agriscience;
- (t). Environmental Studies in Agriscience;
- (u). Equine Science;
- (v). Forestry;
- (w). Horticulture;
- (x). Small Animal Care/Management;
- (y). Veterinary Assistant; and
- (z). Oracle Academy Course: DB Programming

with PL/SQL.

d. Social Studies—4 units:

i. Civics* (1 unit) or 1/2 unit of Civics* and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

ii. U.S. History*;

iii. 1 unit from the following:

- (a). World History*;
- (b). World Geography*;
- (c). Western Civilization*;

- (d). AP European History.
- iv. 1 unit from the following:
 - (a). World History*;
 - (b). World Geography*;
 - (c). Western Civilization*;
 - (d). AP European History;
 - (e). Law Studies;
 - (f). Psychology;
 - (g). Sociology;
 - (h). Civics (second semester—1/2 credit); or
 - (i). African American Studies;

NOTE: Students may take two half credit courses for the fourth required social studies unit.

v. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among the primary courses in the student's area of concentration for the fourth required social studies unit:

- (a). Advanced Child Development;
- (b). Early Childhood Education II;
- (c). Family and Consumer Sciences II;
- (d). ProStart II;
- (e). T and I Cooperative Education (TICE);
- (f). Cooperative Agriculture Education;
- (g). Administrative Support Occupations;
- (h). Business Communication;
- (i). Cooperative Office Education;
- (j). Entrepreneurship—Business;
- (k). Lodging Management II;
- (l). Advertising and Sales Promotion;
- (m). Cooperative Marketing Education I;
- (n). Entrepreneurship—Marketing;
- (o). Marketing Management;
- (p). Marketing Research;
- (q). Principles of Marketing II;
- (r). Retail Marketing;
- (s). Tourism Marketing;
- (t). CTE Internship;
- (u). General Cooperative Education II;
- (v). STAR II.

e. Health Education—1/2 unit:

i. JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

f. Physical Education—1 1/2 units:

i. shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students;

ii. a maximum of 4 units of Physical Education may be used toward graduation.

NOTE: The substitution of JROTC is permissible.

g. Foreign language—2 units:

i. shall be 2 units in the same foreign language or two speech courses.

h. Arts—1 unit:

i. 1 unit Art (§2333), Dance (§2337), Media Arts (§2354), Music (§2355), Theatre Arts, (§2369), or Fine Arts Survey;

NOTE: Students may satisfy this requirement by earning half credits in two different arts courses.

ii. a student completing a career area of concentration may substitute one of the following BESE/Board of Regents approved IBC course from among

the primary courses in the student's area of concentration for the fourth required applied art unit:

- (a). Advanced Clothing and Textiles;
- (b). ABC Carpentry II TE;
- (c). ABC Electrical II TE;
- (d). ABC Welding Technology II;
- (e). Advanced Metal Technology;
- (f). Advanced Technical Drafting;
- (g). Architectural Drafting;
- (h). ABC Carpentry II—T and I;
- (i). ABC Welding Technology II—T and I;
- (j). Cabinetmaking II;
- (k). Commercial Art II;
- (l). Cosmetology II;
- (m). Culinary Occupations II;
- (n). Custom Sewing II;
- (o). Graphic Arts II;
- (p). Photography II;
- (q). Television Production II;
- (r). Upholstery II;
- (s). Welding II;
- (t). ABC Carpentry In Agriscience;
- (u). ABC Electricity in Agriscience;
- (v). ABC Welding Technology Agriscience;
- (w). Agriscience Construction Technology;
- (x). Agriscience Power Equipment;
- (y). Floristry;
- (z). Landscape Design and Construction;
- (aa). Introduction to Business Computer Applications;

Applications;

- (bb). Accounting II;
- (cc). Business Computer Applications;
- (dd). Computer Multimedia Presentations;
- (ee). Desktop Publishing;
- (ff). Keyboarding Applications;
- (gg). Telecommunications;
- (hh). Web Design I and II;
- (ii). Word Processing; and
- (jj). Digital Media II.

i. Electives—3 units.

j. Total—24 units.

k. The substitutions below are allowed for students attending the New Orleans Center for Creative Arts.

i. NOCCA Integrated English I, II, III, and IV can be substituted for English I, II, III, and IV.

ii. NOCCA Integrated Mathematics I, II, and III can be substituted for Algebra I, Geometry and Algebra II.

iii. NOCCA Integrated Science I, II, III, and IV can be substituted for Environmental Science, Biology, Chemistry, and Physics.

iv. NOCCA Integrated World History I, II, III, and IV can be substituted for World Geography, World History, Civics, and U.S. History.

4. High School Area of Concentration

a. All high schools shall provide students the opportunity to complete an area of concentration with an academic focus and/or a career focus.

i. Incoming freshmen prior to 2008-2009 can complete an academic area of concentration by completing the current course requirements for the Taylor Opportunity Program for Students (TOPS) Opportunity Award.

ii. Incoming freshmen in 2008-2009 and beyond can complete an academic area of concentration by completing the course requirements for the LA Core 4 curriculum.

iii. To complete a career area of concentration, students shall meet the minimum requirements for graduation including four elective primary credits in the area of concentration and two related elective credits, including one computer/technology course. Areas of concentration are identified in the career options reporting system with each LEA designating the career and technical education areas of concentration offered in their school system each year. The following computer/technology courses can be used to meet this requirement.

Course	Credit
Computer/Technology Literacy	1
Computer Applications or Business Computer Applications	1
Computer Architecture	1
Computer Science I, II	1 each
Computer Systems and Networking I, II	1 each
Desktop Publishing	1
Digital Graphics & Animation	1/2
Multimedia Presentations	1/2 or 1
Web Mastering or Web Design	1/2
Independent Study in Technology Applications	1
Word Processing	1
Telecommunications	1/2
Introduction to Business Computer Applications	1
Technology Education Computer Applications	1
Advanced Technical Drafting	1
Computer Electronics I, II	1 each
Database Programming with PL/SQL	1
Java Programming	1
Database Design and Programming	1/2
Digital Media I, II	1 each

5. Academic Endorsement

a. Graduating seniors who meet the requirements for a College and Career diploma and satisfy the following performance indicators shall be eligible for an academic endorsement to the College and Career diploma.

i. Students graduating prior to 2011-2012 shall complete an academic area of concentration. Students graduating in 2011-2012 and beyond shall complete the following curriculum requirements.

NOTE: For courses indicated with *, an Advanced Placement (AP) or International Baccalaureate (IB) course designated in §2325 may be substituted.

(a). English—4 units:

- (i). English I;
- (ii). English II;
- (iii). English III*;
- (iv). English IV*.

(b). Mathematics—4 units:

- (i). Algebra I or Algebra I-Pt. 2;
- (ii). Geometry;
- (iii). Algebra II;
- (iv). the remaining unit shall come from the

following:

[a]. Advanced Math—Pre-Calculus;

[b]. Advanced Math—Functions and

Statistics;

- [c]. Pre-Calculus*;
- [d]. Calculus*;
- [e]. Probability and Statistics*;
- [f]. Discrete Mathematics; or
- [g]. AP Calculus BC.

(c). Science—4 units:

- (i). Biology*;
- (ii). Chemistry*;
- (iii). 1 units of advanced science from the

following courses: Biology II, Chemistry II, Physics, or Physics II;

- (iv). 1 additional science course.

(d). Social Studies—4 units:

- (i). Civics* (1 unit) or 1/2 unit of Civics*

and 1/2 unit of Free Enterprise;

NOTE: Students entering the ninth grade in 2011-2012 and beyond must have one unit of Civics with a section on Free Enterprise.

- (ii). U.S. History*;

(iii). 1 unit from the following:

- [a]. World History*;
- [b]. World Geography*;
- [c]. Western Civilization;
- [d]. AP European History;

(iv). 1 unit from the following:

- [a]. World History*;
- [b]. World Geography*;
- [c]. Western Civilization;
- [d]. AP European History;
- [e]. Law Studies;
- [f]. Psychology;
- [g]. Sociology; or
- [h]. African American Studies.

(e). Health Education—1/2 unit:

(i). JROTC I and II may be used to meet the Health Education requirement. Refer to §2347.

(f). Physical Education—1 1/2 units:

(i). shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students.

NOTE: The substitution of JROTC is permissible.

ii. Assessment Performance Indicator

(a) Students graduating prior to 2013-2014 shall pass all four components of GEE with a score of *Basic* or above, or one of the following combinations of scores with the English language arts score at *Basic* or above:

(i) one *Approaching Basic*, one *Mastery* or *Advanced*, *Basic* or above in the remaining two; or

(ii) two *Approaching Basic*, two *Mastery* or above.

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

- (i). English II and English III;
- (ii). Algebra I and Geometry;
- (iii). Biology and U.S. History.

NOTE: Transfer students need only meet this requirement for the EOC tests they are required to take according to the transfer rules found in §1829 of Bulletin 118.

iii. Students shall complete one of the following requirements:

- (a). senior project;
- (b). one Carnegie unit in an AP course and attempt the AP exam;

(c). one Carnegie unit in an IB course and attempt the IB exam; or

- (d). three college hours of non-remedial credit in:
 - (i). mathematics;
 - (ii). social studies;
 - (iii). science;
 - (iv). foreign language; or
 - (v). English language arts.

iv. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award.

v. Students shall achieve an ACT Composite Score of at least 23 or the SAT equivalent.

6. Career/Technical Endorsement

a. Students who meet the requirements for a College and Career diploma and satisfy the following performance indicators shall be eligible for a career/technical endorsement to the College and Career diploma.

i. Students graduating prior to 2011-2012 shall meet the current course requirements for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2011-2012 and beyond shall meet the course requirements for the Louisiana Core 4 Curriculum.

ii. Students shall complete the career area of concentration.

iii. Assessment Performance Indicator

(a) Students graduating prior to 2009-2010 shall pass the English language arts, mathematics, science, and social studies components of the GEE at the *Approaching Basic* level or above. Students graduating in 2009-2010 and beyond prior to 2013-2014 shall pass all four components of the GEE with a score of basic or above or one of the following combinations with the English language arts score at basic or above:

(i). one *Approaching Basic*, one *Mastery* or *Advanced*, and *Basic* or above in the remaining two;

(ii). two *Approaching Basic*, two *Mastery* or above.

(b) Students graduating in 2013-2014 and beyond shall achieve a score of *Good* or *Excellent* on each of the following EOC tests:

- (i). English II and English III;
- (ii). Algebra I and Geometry;
- (iii). Biology and U.S. History.

NOTE: Transfer students need only meet this requirement for the EOC tests they are required to take according to the transfer rules found in §1829 of Bulletin 118.

iv. Students shall complete a minimum of 90 work hours of work-based learning experience related to the student's area of concentration or senior project related to student's area of concentration with 20 hours of related work-based learning and mentoring and complete one of the following requirements:

(a). industry-based certification in student's area of concentration from the list of industry-based certifications approved by BESE; or

(b). three college hours in a career/technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waived from having to take such hours in student's area of concentration.

v. Students shall achieve a minimum GPA of 2.5.

vi. Students graduating prior to 2008-2009 shall achieve the current minimum ACT Composite Score (or SAT Equivalent) for the TOPS Opportunity Award or the TOPS Tech Award. Students graduating in 2008-2009 and beyond shall achieve a minimum ACT Composite Score (or SAT Equivalent) of 20 or the state ACT average (whichever is higher) or the Silver Level on the WorkKeys Assessment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 37:3193 (November 2011), LR 38:754 (March 2012).

§2325. Advanced Placement and International Baccalaureate

A. Each high school shall provide students access to at least one advanced placement (AP) or international baccalaureate (IB) course.

B. High school credit shall be granted to a student successfully completing an AP course or an IB course, regardless of his test score on the examination provided by the college board or on the IB exam.

1. Procedures established by the college board must be followed.

2. Courses listed in the program of studies may be designated as advanced placement courses on the student's transcript by following procedures established by the DOE.

a. The chart below lists the college board AP course titles, the IB course titles, and the corresponding Louisiana course titles for which these courses can be substituted.

College Board AP Course Title(s)	IB Course Title	Louisiana Course Title
Art History		AP Art History
Biology	Biology II IB	Biology II or Biology I
	Biology III IB	Biology Elective
Calculus AB	Math Methods II IB	Calculus
Calculus BC		AP Calculus BC
Chemistry		Chemistry II or Chemistry I
Computer Science A		AP Computer Science A
Computer Science AB		AP Computer Science AB
Economics: Macro	Economics IB	Economics
Economics: Micro		AP Economics: Micro
English Language and Composition	English III IB	English III
English Literature and Composition	English IV IB	English IV
Environmental Science	Environmental Systems IB	Environmental Science
European History		AP European History
French Language	French IV IB	French IV
	Film Study I IB	Visual Arts Elective
	Film Study II IB	Visual Arts Elective
French Literature	French V IB	French V
German Language		German IV
Government and Politics: Comparative		AP Government and Politics: Comparative

College Board AP Course Title(s)	IB Course Title	Louisiana Course Title
Government and Politics: United States		AP Government and Politics: United States (substitute for Civics)
Human Geography	World Geography IB	World Geography
	Informational Technology IB	Computer Systems/Networking I
Latin Literature		Latin V
Latin: Vergil		Latin IV
	Math Methods I IB	Pre-Calculus
	Music I IB	Music Theory I
Music Theory	Music II IB	Music Theory II
Physics B	Physics I IB	Physics
Physics C: Electricity and Magnetism		AP Physics C: Electricity and Magnetism
Physics C: Mechanics		AP Physics C: Mechanics
	Physics II IB	Physics II
Psychology		Psychology
Spanish Language	Spanish IV IB	Spanish IV
Spanish Literature	Spanish V IB	Spanish V
Statistics		Probability and Statistics
Studio Art: 2-D Design	Art/Design IV IB	Art IV
Studio Art: 3-D Design		AP Studio Art 3-D Design
Studio Art: Drawing	Art Design III IB	Art III
	Theory of Knowledge I IB	Social Studies Elective
	Theory of Knowledge IB	Social Studies Elective
U.S. History	U.S. History IB	U.S. History
World History		World History
	World History IB	Western Civilization

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1294 (June 2005), amended LR 34:2032 (October 2008), LR 37:3198 (November 2011), LR 38:759 (March 2012).

§2345. Foreign Languages

A. The foreign language course offerings shall be as follows.

Course Title(s)	Units
French I, II, III, IV, V	1 each
German I, II, III, IV, V	1 each
Italian I, II, III, IV, V	1 each
Latin I, II, III, IV, V	1 each
Russian I, II, III, IV, V	1 each
Spanish I, II, III, IV, V	1 each
American Sign Language I, II	1 each
Greek I, II, III, IV	1 each
Chinese I, II, III, IV	1 each
Japanese I, II, III, IV	1 each
Hebrew I, II, III, IV	1 each
Arabic I, II, III, IV	1 each

B. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 273; R.S. 17:284.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1295 (June 2005), amended LR 36:1996 (September 2010), LR 38:759 (March 2012).

§2351. Journalism

A. The journalism course offerings shall be as follows.

Course Title(s)	Units
Journalism I, II	1 each
Publications I, II (Yearbook)	1 each
Publications I, II (Newspaper)	1 each

B. Teachers must be certified in journalism to teach Journalism.

C. Teachers certified in the area of journalism, English, and/or business education are qualified to teach Publications I and II (Yearbook).

D. Teachers certified in the areas of journalism, and/or English are qualified to teach Publications I and II (Newspaper).

E. Publications I is a prerequisite to Publications II.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1296 (June 2005), amended LR 38:760 (March 2012).

§2353. Mathematics

A. Mathematics Requirements for the College and Career Diploma

1. Louisiana Core 4 Curriculum. Four units of math shall be required for graduation. They shall be the following:

- a. one unit from the following courses:
 - i. Algebra I;
 - ii. Applied Algebra I; or
 - iii. Algebra I-Pt. 2;
- b. Geometry or Applied Geometry;
- c. Algebra II;
- d. one unit from the following:
 - i. Financial Mathematics;
 - ii. Math Essentials;
 - iii. Advanced Math—Pre-Calculus;
 - iv. Advanced Math—Functions and Statistics;
 - v. Pre-Calculus;
 - vi. Calculus;
 - vii. Probability and Statistics;
 - viii. Discrete Mathematics;
 - ix. AP Calculus BC; or
 - x. a locally-initiated elective approved by BESE as a math substitute.

2. Louisiana Basic Core Curriculum. Four units of math shall be required for graduation. They shall be the following:

- a. Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units);
- b. Geometry;
- c. the remaining units shall come from the following:
 - i. Algebra II;
 - ii. Financial Mathematics;
 - iii. Math Essentials;
 - iv. Advanced Math-Pre-Calculus;

- v. Advanced Math-Functions and Statistics;
- vi. Pre-Calculus;
- vii. Calculus;
- viii. Probability and Statistics;
- ix. Discrete Mathematics; or
- x. a locally-initiated elective approved by BESE as a math substitute.

3. Effective for 2005-2006 to 2007-2008 incoming freshmen, three units of mathematics shall be required for graduation. All students must complete one of the following:

- a. Algebra I (1 unit); or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or
- b. Integrated Mathematics I (1 unit);
- c. the remaining unit(s) shall come from the following:
 - i. Integrated Mathematics II;
 - ii. Integrated Mathematics III;
 - iii. Geometry;
 - iv. Algebra II;
 - v. Financial Mathematics;
 - vi. Advanced Math-Pre-Calculus;
 - vii. Advanced Math-Functions and Statistics;
 - viii. Pre-Calculus;
 - ix. Calculus;
 - x. Probability and Statistics;
 - xi. Math Essentials; and
 - xii. Discrete Mathematics.

4. The mathematics course offerings for the College and Career Diploma shall be as follows.

Course Title(s)	Units
Advanced Math—Pre-Calculus	1
Advanced Math—Functions and Statistics	1
Algebra I, II	1 each
Applied Algebra I	1
Algebra I—Part 1	1
Algebra I—Part 2	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Applied Geometry	1
Integrated Mathematics I, II, III	1 each
Pre-Calculus	1
Probability and Statistics	1
Math Essentials	1
AP Calculus BC	1

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1296 (June 2005), amended LR 33:2605 (December 2007), LR 34:1609 (August 2008), LR 35:2322 (November 2009), LR 36:1493 (July 2010), LR 38:760 (March 2012).

Catherine R. Pozniak
Executive Director

1203#027

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—College and Career Diploma and Career Diploma (LAC 28: CXV.2318 and 2319)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2318. The College and Career Diploma and §2319. The Career Diploma. These policy revisions stipulate that the end-of-course (EOC) test scores shall count as 5 percent of the final grade for students who qualify for LEAP Alternate Assessment, Level 2 (LAA 2). The policy revision also states that entering freshmen in 2010-2011 and beyond who qualify for the LAA 2 can meet the assessment requirement for graduation by passing the LAA 2 or by meeting the EOC assessment requirement for graduation. These revisions were requested by a committee of special education practitioners and parents.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2318. The College and Career Diploma

A. - B.1.c. ...

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a standard diploma.

a. Students must pass three end-of-course tests in the following categories:

- i. English II or English III;
- ii. Algebra I or Geometry;
- iii. Biology or American History.

b. Students with disabilities identified under IDEA who meet the LAA 2 participation criteria may meet the assessment requirements by passing the English language areas and mathematics components of the LAA 2 and either the science or social studies component of LAA 2.

3. Students enrolled in a course for which there is an EOC test must take the EOC test.

a. The EOC test score shall count a percentage of the student’s final grade for the course.

b. The percentage shall be between 15 percent and 30 percent inclusive, and shall be determined by the LEA.

i. For students with disabilities identified under IDEA who meet the LAA 2 participation criteria prior to taking the first EOC test, the EOC test score shall count for 5 percent of the students’ final grade for the course.

c. The grades assigned for the EOC test achievement levels shall be as follows.

EOC Achievement Level	Grade
Excellent	A
Good	B
Fair	C
Needs Improvement	D or F

d. The DOE will provide conversion charts for various grading scales used by LEAs.

4. For students with disabilities who have passed two of the three required end-of-course tests or two of the three required components of the LAA 2 and have exhausted all opportunities available through the end of the 12th grade to pass the remaining required end-of-course test or LAA 2 component, that end-of-course test or LAA 2 component may be waived by the State Superintendent of Education if the Department of Education determines the student’s disability significantly impacts his/her ability to pass the end-of-course test.

B.5. - C.6.a.vi. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2-3; R.S. 17:274; R.S. 17:274.1; R.S. 17: 395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 36:1486 (July 2010), LR 37:547 (February 2011), LR 37:1128 (April 2011), LR 37:2129 (July 2011), LR 37:2132 (July 2011), LR 38:761 (March 2012).

§2319. The Career Diploma

A. - B.1.c. ...

2. For incoming freshmen in 2010-2011 and beyond, students must meet the assessment requirements below to earn a standard diploma.

a. Students must pass three end-of-course tests in the following categories:

- i. English II or English III;
- ii. Algebra I or Geometry;
- iii. Biology or American History.

b. Students with disabilities identified under IDEA who meet the LAA 2 participation criteria may meet the assessment requirements by passing the English language areas and mathematics components of the LAA 2 and either the science or social studies component of LAA 2.

3. Students enrolled in a course for which there is an EOC test must take the EOC test.

a. The EOC test score shall count a percentage of the student’s final grade for the course.

b. The percentage shall be between 15 percent and 30 percent inclusive, and shall be determined by the LEA.

i. For students with disabilities identified under IDEA who meet the LAA 2 participation criteria prior to taking the first EOC test, the EOC test score shall count for 5 percent of the students’ final grade for the course.

c. The grades assigned for the EOC test achievement levels shall be as follows.

EOC Achievement Level	Grade
Excellent	A
Good	B
Fair	C
Needs Improvement	D or F

d. The DOE will provide conversion charts for various grading scales used by LEAs.

4. For students with disabilities who have passed two of the three required end-of-course tests or two of the three required components of the LAA 2 and have exhausted all opportunities available through the end of the 12th grade to pass the remaining required end-of-course test or LAA 2 component, that end-of-course test or LAA 2 component may be waived by the state superintendent of education if the Department of Education determines the student's disability significantly impacts his/her ability to pass the end-of-course test.

B.5. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4; R.S. 17:183.2; R.S. 17:183.3; R.S. 17:274; R.S. 17:274.1; R.S. 17:395.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1291 (June 2005), amended LR 31:2211 (September 2005), LR 31:3070 (December 2005), LR 31:3072 (December 2005), LR 32:1414 (August 2006), LR 33:429 (March 2007), LR 33:432 (March 2007), LR 33:2050 (October 2007), LR 33:2354 (November 2007), LR 33:2601 (December 2007), LR 34:1607 (August 2008), LR 35:1230 (July 2009), LR 35:1876 (September 2009), LR 35:2321 (November 2009), LR 35:2750 (December 2009), LR 36:1490 (July 2010), LR 37:548 (February 2011), LR 37:1130 (April 2011), LR 37:2130 (July 2011), LR 38:761 (March 2012).

Catherine R. Pozniak
Executive Director

1203#028

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Artist or Talented Certificate (LAC 28:CXXXI.343)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §343. Artist or Talented Certificate. This policy revision will remove the annual renewal requirement and allow individuals to continue to serve with a valid ancillary artist certificate as long as they remain in the same school district. This change in policy will eliminate the requirement of school districts having to submit paperwork each school year for the renewal of this certificate.

Title 28 EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 3. Teaching Authorizations and Certifications

Subchapter C. Ancillary Teaching Certificates

§343. Artist or Talented Certificate

A. An ancillary artist or talented certificate is issued to an applicant who has earned an advanced degree in an artistic or talented field, or who has produced evidence of creative accomplishments over an extended period of time. An ancillary artist or ancillary talented certificate allows the

holder to provide artistic and/or creative services in a regular classroom to children at any age level.

B. Artists Certificate (Art, Creative Writing, Drama, Dance, Music, Theatre, Visual Arts)—valid for continuous service in one school system.

1. This certificate allowing the certificate holder to provide artist services is valid only for the period and district of employment.

2. Certification is granted only in the specific artist area requested (art, creative writing, drama, dance, music, theatre, or visual arts).

3. Eligibility requirements:

a. a written request from the Louisiana employing authority indicating that the person will be employed once the certification is granted;

b. substantive evidence of artistic and/or creative accomplishment over an extended period of time, submitted in the form of newspaper articles, brochures, catalogs, playbills, programs, magazines, published music, letters from accomplished peers, etc. (photographs, slides and actual artwork are not acceptable).

4. The person holding such certification is not eligible for tenure.

C. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1805 (October 2006), amended LR 38:762 (March 2012).

Catherine R. Pozniak
Executive Director

1203#030

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Criminal Offenses (LAC 28:CXXXI.903, 906, 909, and 911)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §903. Definitions, §906. Procedures and Rules for Issuance of a Denied Certificate, §909. Suspension and Revocation of Certificates due to Fraudulent Documentation Pertaining to Certification, and §911. Procedures and Rules for Reinstatement of Certificates Suspended or Revoked due to Criminal Convictions and/or Submission of Fraudulent Documents. The revisions to policy will replace the hearing process with the records review process for individuals, whose certification has been denied, suspended, or revoked due to a criminal conviction of a felony. This revision will also stipulate that an individual, who has been denied issuance of a certificate by the board after a records review has been conducted, may not reapply to the board. Requests for records review will also be denied for failure to disclose convictions, expungements, or for submitting falsified academic records. The revisions will streamline the process

for reinstatement or issuance of certificates to individuals who have felony convictions.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel
Chapter 9. Actions Related to Criminal Offenses
and/or the Submission of Fraudulent
Documentation**

§903. Definitions

A. For the purposes of this policy:

Applicant—any person applying for a Louisiana teaching authorization of any kind.

Board—the Board of Elementary and Secondary Education as a whole and/or any of its standing committees.

Convicted or Conviction—any proceedings in which the accused person pleads guilty or no contest, and those proceedings that are tried and result in a judgment of guilty.

Department—the Louisiana Department of Education.

Fraudulent Document—any paper, instrument, or other form of writing that is false, altered, or counterfeit and that is used as a subterfuge or device to induce the issuance of a certificate.

Offense or Crime—those listed in R.S. 15.587.1(C) and any felony offense whatsoever.

Teaching Certificate or Certificate—any license, permit, or certificate issued by the Division of Teacher Certification and Higher Education of the Department of Education.

B. The following crimes are reported under R.S.15:587.1:

1. R.S. 14:30, R.S. 14:30.1, R.S. 14:31, 14:32.6, 14:32.7, 14:32.8, R.S. 14:41 through R.S.14:45, R.S. 14:74, R.S. 14:78, R.S. 14:78.1, R.S. 14:80 through R.S. 14:86, R.S. 14:89, R.S. 14:89.1, R.S. 14:92, R.S. 14:93, R.S. 14:93.3, R.S. 14:106, R.S. 14:282, R.S. 14:286, R.S. 40:966(A), R.S. 40:967(A), R.S. 40:968(A), R.S. 40:969(A), and R.S. 40:970(A) or convictions for attempt or conspiracy to commit any of those offenses;

2. those of a jurisdiction other than Louisiana which, in the judgment of the bureau employee charged with responsibility for responding to the request, would constitute a crime under the provisions cited in this Subsection, and Those under the *Federal Criminal Code* having analogous elements of criminal and moral turpitude. (Federal Criminal Code provisions are in Title 18 of U.S.C.A.) Specifically:

R.S. 14:283.1	Voyeurism
*R.S. 14:283	Video Voyeurism
R.S. 14:284	Peeping Tom
*R.S. 14:30	First degree murder
*R.S. 14:30.1	Second degree murder
*R.S. 14:31	Manslaughter
*14:32.6	First Degree Feticide
*14:32.7	Second Degree Feticide
*14:32.8	Third Degree Feticide
*14:41	Rape
*R.S. 14:42	Aggravated rape
*R.S. 14:42.1	Forcible rape
*R.S. 14:43	Simple rape
*R.S. 14:43.1	Sexual battery
*R.S. 14:43.2	Aggravated sexual battery
*R.S. 14:43.3	Oral sexual battery
*R.S. 14:43.5	Intentional exposure to the AIDS virus
*R.S. 14:44	Aggravated kidnapping

*R.S. 14:44.1	Second degree kidnapping
*R.S. 14:45	Simple kidnapping
R.S. 14:74	Criminal neglect of family
*R.S. 14:78	Incest
*R.S. 14:78.1	Aggravated Incest
R.S. 14:79.1	Criminal abandonment
*R.S. 14:80	Felony Carnal knowledge of a juvenile
*R.S. 14:81	Indecent behavior with a juvenile
*R.S. 14:81.1	Pornography involving juveniles
	Molestation of a juvenile or a person with a physical or mental disability
*R.S. 14:81.2	
*R.S. 14:81.3	Computer-aided solicitation of a minor
*R.S. 14:82	Prostitution (In some instances)
*R.S. 14:82.1	Prostitution; Persons under seventeen; Additional offenses
R.S. 14:83	Soliciting for prostitutes
R.S. 14:83.1	Inciting prostitution
R.S. 14:83.2	Promoting prostitution
R.S. 14:83.3	Prostitution by massage
R.S. 14:83.4	Massage; sexual content prohibited
*R.S. 14:84	Pandering
R.S. 14:85	Letting premises for prostitution
R.S. 14:85.1	Letting premises for obscenity
*R.S. 14:86	Enticing persons into prostitution
*R.S. 14:89	Crime against nature
*R.S. 14:89.1	Aggravated crime against nature
* R.S. 14:92	Contributing to the delinquency of juveniles (In some instances)
*R.S. 14:93	Cruelty to juveniles
R.S. 14:93.2.1	Child desertion
*R.S. 14:93.3	Cruelty to the infirm
*R.S. 14:106	Obscenity
R.S. 14:282	Operation of places of prostitution
*R.S. 14:286	Sale of minor children
R.S. 40:966(A)	Penalty for distribution or possession with intent to distribute narcotic drugs listed in Schedule I; Manufacture; Distribution
R.S. 40:967(A)	Prohibited acts; Schedule II, penalties; Manufacture; Distribution
R.S. 40:968(A)	Prohibited acts; Schedule III; penalties; Manufacture; Distribution
R.S. 40:969(A)	Prohibited acts; Schedule IV; penalties; Manufacture; Distribution
R.S. 40:970(A)	Prohibited acts; Schedule V; penalties; Manufacture; Distribution

*Certificate issuance/reinstatement will never be considered for crimes marked with an asterisk.

C. Convictions that are set aside pursuant to Articles 893 or 894 of the *Louisiana Code of Criminal Procedures*, expunged, or which are pardoned subject to Louisiana first offender pardon laws nonetheless, shall be treated as convictions for the purpose of denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1830 (October 2006), amended LR 34:2559 (December 2008), LR 38:763 (March 2012).

§906. Procedures and Rules for Issuance of a Denied Certificate

A. Issuance will never be considered for teachers who have been convicted of a felony for the following crimes: R.S. 14:283, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:78.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:82 (in some instances), 14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92 (in some instances), 14:93, 14:93.3, 14:106, and 14:286.

B. Issuances of certificates shall not be considered until at least three years have elapsed from the date of entry of final conviction.

C. An applicant may apply to the board for issuance of his/her teaching certificate after the lapse of time indicated above and under the following conditions.

1. There have been no further convictions. The applicant must provide a current state and FBI criminal history background check from state police that is clean and clear.

2. There has been successful completion of all conditions/requirements of any parole and/or probation. The applicant must provide relevant documentation.

D. Applicant Responsibilities

1. Contact the office of the Board of Elementary and Secondary Education and request a records review for issuance of the certificate that was denied due to the submission of fraudulent documentation or due to conviction for a crime listed in R.S. 15:587.1 or for any felony.

2. Provide each applicable item identified above in Subsection C, evidence that all requirements for certification have been successfully completed, and further documentation evidencing rehabilitation. The applicant is recommended to provide letters of support from past/present employers, school board employees and officials, faculty, and administrative staff from the college education department, law enforcement officials and/or from other community leaders.

E. State Board Responsibilities

1. The board will consider the request for issuance and documentation provided. The board is not required to conduct a records review for any of the asterisked crimes and may summarily deny a request for issuance of certificate for any of the asterisked crimes.

2. When the board or its designees conduct an issuance records review, board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. Only the written documentation provided prior to the records review will be considered.

3. The Board of Elementary and Secondary Education reserves the right to accept or reject any document offered as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for issuance of a teaching certificate.

4. The board shall deny a request for a records review for any applicant who:

- a. failed to disclose prior criminal convictions and/or expungements; or
- b. falsified academic records.

5. The committee of the board shall make a recommendation to the full board regarding whether the applicant's teaching certificate should be issued. Board staff shall notify the applicant of the board's action.

6. The action of the board is a final decision and can only be appealed to a court of proper jurisdiction in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:1999 (September 2010), amended LR 38:763 (March 2012).

§909. Suspension and Revocation of Certificates due to Fraudulent Documentation Pertaining to Certification

A. A Louisiana teaching certificate shall be suspended and/or revoked if a teacher presents fraudulent documentation pertaining to his/her certificate to the State Board of Elementary and Secondary Education or the Department of Education.

B. The department shall investigate prior to determining that a teacher has submitted fraudulent documentation pertaining to his/her teaching certificate. Upon confirmation of the information investigated, the department shall notify the teacher by certified mail that his/her certificate has been suspended pending official board action and that a records review shall be conducted by the board to consider revocation.

C. Such records review shall be limited to the issue of whether or not the document submitted was fraudulent. The teacher shall provide the board with any documentation that will refute the fraudulent nature of the document.

D. The committee of the board shall make a recommendation to the full board, based on documentation received from the department and the teacher, whether the teaching certificate should be revoked. The decision of the board shall be transmitted to the local school board and to the teacher affected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1831 (October 2006), amended LR 38:764 (March 2012).

§911. Procedures and Rules for Reinstatement of Certificates Suspended or Revoked due to Criminal Convictions and/or Submission of Fraudulent Documents

A. Reinstatement will never be considered for teachers who have been convicted of a felony for the following crimes: R.S. 14:283, 14:30, 14:30.1, 14:31, 14:32.6, 14:32.7, 14:32.8, 14:41, 14:42, 14:42.1, 14:43, 14:43.1, 14:43.2, 14:43.3, 14:43.5, 14:44, 14:44.1, 14:45, 14:78, 14:78.1, 14:80, 14:81, 14:81.1, 14:81.2, 14:81.3, 14:82 (In some instances), 14:82.1, 14:84, 14:86, 14:89, 14:89.1, 14:92 (in some instances), 14:93, 14:93.3, 14:106, and 14:286.

B. Reinstatements of certificates shall not be considered until at least three years have elapsed from the date of entry of final conviction.

C. An applicant may apply to the board for reinstatement of his/her teaching certificate after the lapse of time indicated above and under the following conditions.

1. There have been no further convictions and/or submissions of fraudulent documentation. The applicant

must provide a current state and FBI criminal history background check from state police that is clean and clear.

2. There has been successful completion of all conditions/requirements of any parole and/or probation. The applicant must provide relevant documentation.

D. Applicant Responsibilities

1. Contact the office of the Board of Elementary and Secondary Education and request a records review for reinstatement of the certificate.

2. Provide each applicable item identified above in Subsection C, evidence that all requirements for certification have been successfully completed, and further documentation evidencing rehabilitation. The applicant is recommended to provide letters of support from past/present employers, school board employees and officials, faculty, and administrative staff from the college education department, law enforcement officials and/or from other community leaders.

E. State Board Responsibilities

1. The board will consider the request for reinstatement and documentation provided. The board is not required to conduct a reinstatement records review and may summarily deny a request for issuance/reinstatement.

2. If the board or its designees decide to conduct a reinstatement records review, board staff shall notify the applicant of a date, time, and place when a committee of the board shall consider the applicant's request. Only the written documentation provided prior to the records review will be considered.

3. The Board of Elementary and Secondary Education reserves the right to accept or reject any document as evidence of rehabilitation and the right to determine if adequate rehabilitation has occurred and will itself determine if and when an applicant is eligible for reinstatement of a teaching certificate.

4. The board shall deny any request for issuance by any applicant who:

- a. failed to disclose prior criminal convictions and/or expungements; or
- b. falsified academic records.

5. The committee of the board shall make a recommendation to the full board regarding whether the applicant's teaching certificate should be issued, reinstated, suspended for an additional period of time, or remain revoked. board staff shall notify the applicant of the board's action.

6. The action of the board is a final decision and can only be appealed to a court of proper jurisdiction in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1831 (October 2006), amended LR 34:2560 (December 2008), LR 36:1999 (September 2010), LR 38:764 (March 2012).

Catherine R. Pozniak
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1203#029

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Educational Leader Practitioner (Residency) Program (LAC 28:CXXXI.240)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel: §240. Educational Leader Practitioner (residency) Program*. The revised policy to the Educational Leader Practitioner (residency) Program will expand the number of entry points. University and private providers would be able to admit candidates earlier than present policy allows. Candidates could then finish their coursework and begin residencies earlier in the year. Current certification policy requires all educational leader practitioner candidates to begin training during a summer institute and assume positions as administrative interns at the beginning of the school year. An earlier start time will help residents to be placed in schools to gain experience more readily.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 2. Louisiana Educator Preparation Programs

Subchapter C. Alternate Educational Leader Preparation Programs

§240. Educational Leader Practitioner (Residency) Program

A. - A.1.d.i. ...

2. Leader Preparation (First Session)

a. All leader practitioner candidates will participate in an initial institute training that will build skills in the areas of instructional, organizational, and personal leadership. The *Standards for Educational Leaders in Louisiana* will serve as the basis of the curriculum. The institute will provide a balanced curriculum that includes learning opportunities grounded in practical experience, theory, and research. Topics to be addressed include but are not limited to the following: leading with a vision, using data to lead school improvement, creating and leading effective school teams, building a high-performance learning culture and professional learning communities, and leading and learning with technology. acquired knowledge and skills will be utilized in the planning of residency experiences with a residency supervisor, who is assigned by the program provider. In addition, participants will begin developing their portfolio and educational leadership development plan.

b. The initial session will include a minimum of 135 contact hours (or 9 credit hours).

3. - 3.e. ...

4. Leader Preparation (Second Session)

a. All leader practitioner candidates will participate in a follow-up institute training that will continue to build skills in the areas of instructional and organizational

leadership. The *Standards for Educational Leaders in Louisiana* will serve as the basis of the curriculum. The institute will provide a balanced curriculum that includes learning opportunities grounded in practical experience, theory, and research. Topics to be addressed include but are not limited to the following: leading a focused drive toward student achievement, organizing the learning environment, and ethical leadership. In addition, program participants will finalize their portfolio and educational leadership development plan.

b. The second session will include 135 contact hours (or 9 credit hours).

i. An approved program provider may choose to provide a portion of the second session curriculum and contact hours during the first session or academic school year.

ii. A minimum of 45 contact hours (or three credit hours) must be provided during the second session.

iii. The provider must provide evidence that the curriculum topics have all been addressed and that the required contact hours/credit hours have been met by the end of the second session.

5. - 7. ...

8. Program requirements must be met by the end of the second session. For certification purposes, approved providers will submit signed statements to the Department of Education indicating that the student completing the Educational Leader Practitioner Program performance-based certification path met the following requirements:

a. passed the school leaders licensure assessment;

b. completed all program coursework (sessions and school year) and the residency;

8.c. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:818 (May 2007), amended LR 38:765 (March 2012).

Catherine R. Pozniak
Executive Director

1203#031

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Educational Technology Areas
(LAC 28:CXXXI.665)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §665. Educational Technology Areas. Current policy contained in Bulletin 746 allows for certification as an educational technology facilitator by the completion of one of two options. Option 1 consists of completing nine semester hours of graduate level coursework in educational technology and Option 2 is the completion of three online courses in

educational technology offered by the Department of Education. The department is making this revision in policy because we are no longer able to offer the online courses to fulfill Option 2 so it will now consist of five online courses offered through Intel Teach Elements. Teachers will be able to complete these online courses with no costs incurred.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 6. Endorsements to Existing Certificates

Subchapter C. All Other Teaching Endorsement Areas

§665. Educational Technology Areas

A. Educational Technology Facilitation

1. Eligibility requirements:

a. valid Type B or Level 2 Louisiana teaching certificate (requires three years of teaching experience);

b. complete one of the following options:

i. Option A: a minimum of nine semester hours of graduate credit in educational technology (three semester hours per course):

(a). design and development of multimedia instructional units;

(b). educational telecommunications, networks, and the internet;

(c). technology leadership in schools; or

ii. Option B: a minimum of five online courses, to include:

(a). Intel Teach Elements: Collaboration in the Digital Classroom, which provides teachers with strategies for building collaborative activities using online tools that support connection and sharing in and beyond the classroom;

(b). Intel Teach Elements: Project-Based Approaches, which helps teachers improve their understanding and application of project-based approaches in the twenty-first century classroom;

(c). Intel Teach Elements: Assessment in 21st Century Classrooms, which shows teachers ways to improve assessment of twenty-first century skills with new assessment strategies and tools for assessing twenty-first century skills;

(d). Intel Teach Elements: Thinking Critically with Data, which helps teachers support thinking critically with data quality, display, and interpretation in students' rapidly changing and busy world of information access;

(e). Intel Teach Elements: Educational Leadership for the 21st Century, which helps school principals and district administrators support teacher effectiveness for student achievement through technology integration;

c. a certified teacher who serves as facilitator of educational technology at the building level may petition the Division of Teacher Certification and Higher Education to be granted an Educational Technology Facilitation endorsement if he/she met one of the following qualifications by August 31, 2002:

i. hold certification in computer literacy; earned an additional six semester hours in educational technology courses; and served as a facilitator of educational technology at the school, district, regional, or state level successfully for

the past three years as verified by the employing authority;
or

ii. served as a facilitator of educational technology at school, district, regional, or state level successfully for the past five years, as verified by the employing authority.

B. Educational Technology Leadership

1. Eligibility requirements:

a. valid Type A or Level 3 Louisiana teaching certificate (requires five years of teaching experience);

b. master's degree from a regionally accredited institution of higher education; and

c. minimum of 21 semester hours of graduate credit, as follows:

i. education technology coursework, nine semester hours:

(a). design and development of multimedia instructional units;

(b). educational telecommunications, networks, and the internet;

(c). technology leadership in schools;

ii. educational technology leadership coursework, 12 semester hours:

(a). technology planning and administration;

(b). professional development for K-12 technology integration;

(c). educational technology research, evaluation, and assessment;

(d). advanced telecommunications and distance education.

2. Persons who have met requirements in Subparagraphs B.1.a and B.1.c of this Section may be issued a non-renewable, non-extendable educational technology leadership provisional certificate that is valid for three years.

3. Certified teachers who served as coordinators of educational technology at the district, regional, and/or state levels may petition the division of teacher certification and higher education to be granted an educational technology leadership certification if they met the following qualifications by August 31, 2002:

a. hold certification in computer literacy; earned an additional nine semester hours in educational technology courses; and served as a coordinator of educational technology above the building level (at the district, regional, or state level) for the past three years, as verified by the employing authority; or

b. served as a coordinator of educational technology above the building level (at the district, regional, or state level) successfully for the past five years, as verified by the employing authority.

C. - C.1.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1820 (October 2006), amended LR 34:2033 (October 2008), amended LR 38:766 (March 2012).

Catherine R. Pozniak
Executive Director

1203#032

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Instructional Coaching (LAC 28:CXXXI.668)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §668. Instructional Coaching. The policy revision will allow for an endorsement to a standard teaching certificate that will focus on teachers interested in becoming school-based coaches, mentors, and teacher leaders who have the potential to be embedded leaders within the school culture, working to enhance classroom teaching and learning through active professional development, collaboration, and mentoring activities. This endorsement will consist of 12 semester hours of graduate level coursework. Teachers have been serving in the capacity of instructional coaches with no certification available for this area. This new endorsement comes from the collaboration between the Pilot Professional Development Program (PPDP) of the Louisiana Systemic Initiatives Program (LaSIP), Louisiana State University, Southern University, and the Board of Regents.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 6. Endorsements to Existing Certificates
Subchapter C. All Other Teaching Endorsement Areas
§668. Instructional Coaching

A. Eligibility Requirements:

1. valid Type B, Level 2, or higher Louisiana teaching certificate;

2. completion of 12 graduate hours to include the following areas:

a. advancing teacher leadership institute, three semester hours;

b. promoting instructional coaching institute, three semester hours;

c. school improvement and research, three semester hours;

d. internship, three semester hours (university and school districts will collaborate to insure meaningful and practical experiences in actual school settings during the course of the educational leadership program).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:767 (March 2012).

Catherine R. Pozniak
Executive Director

1203#033

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Special Education Examiners (LAC 28:CXXXI.415)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §415. Special Education Examiners (required by R.S. 17:1941). The policy revision will allow an additional option for educational diagnosticians who have completed a rigorous national board certification process to receive ancillary certification to serve as educational diagnosticians. Currently there is no policy for individuals who do not want to become certified teachers to serve as educational diagnosticians. This revision will allow individuals who have gone through a rigorous national program the option of requesting this ancillary certificate.

Title 28 EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 4. Ancillary School Service Certificates

Subchapter A. General Ancillary School Certificates

§415. Special Education Examiners

- A. - B.2.b. ...
- C. Educational Diagnostician—valid for five years.
 1. Eligibility Requirements
 - a. Hold current national certification as an educational diagnostician (NCED) through the National Certification of Educational Diagnostician Board.
 2. Renewal guidelines:
 - a. may be renewed every five years at the request of the Louisiana employing authority; and
 - b. complete 150 continuing learning units of district-approved and verified professional development over the five year time period during which the certificate is held; or
 - c. hold current national certification as an educational diagnostician (NCED) through the National Certification of Educational Diagnostician Board.
 3. Reinstatement of a Lapsed Certificate. If certificate holder allows a period of five consecutive calendar years to pass in which he/she is not a regularly employed as an educational diagnostician for at least one semester, or 90 consecutive days, the certificate lapses for disuse. To reinstate a lapsed certificate, the holder must present evidence that he/she earned six semester hours of credit in state-approved courses during the five year period immediately preceding the request for reinstatement (see Chapter 13).
 - D. - H.4....

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1809 (October 2006), amended LR 38:768 (March 2012).

Catherine R. Pozniak
Executive Director

1203#034

RULE

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act
Regulations for Students with Disabilities
(LAC 28:XLIII.167, 168, and 169)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*: Subpart 1. Regulations for Students with Disabilities, §167. State Advisory Panel (State Special Education Advisory Panel), §168. Membership, and §169. Duties. The changes to Louisiana Administrative Code, Title 28, Part XLIII, Sections 167, 168, and 169 allow the State Special Education Advisory Panel to perform duties outside of its role as BESE's advisory body and as IDEA guidelines recommend, to remove certain references to the "state board" from §167, §168, and §169 of Bulletin 1706, which outline the membership and functions of the state advisory panel.

Title 28 EDUCATION

Part. XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

Subpart 1. Regulations for Students with Disabilities

Chapter 1. State Eligibility

Subchapter M. State Advisory Panel

§167. State Advisory Panel (State Special Education Advisory Panel)

A. ...
AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), repromulgated LR 38:768 (March 2012).

§168. Membership

A. General. The advisory panel shall consist of members appointed by the state board or state superintendent, shall be representative of the state population, and shall be composed of individuals involved in or concerned with the education of students with disabilities, including:

1. - 11. ...
- B. Special Rule. A majority of the members of the panel should be individuals with disabilities or parents of children with disabilities (ages birth through 26).

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), amended LR 38:768 (March 2012).

§169. Duties

A. The advisory panel shall perform the following prescribed duties in matters concerning the education of students with disabilities:

1. advise the LDE of unmet needs within the state in the education of students with disabilities;
2. comment publicly on any rules or regulations proposed by the state regarding the education of students with disabilities;
3. advise the LDE in developing evaluations and reporting on data to the secretary under section 618 of the IDEA;
4. advise the LDE in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the IDEA; and
5. advise the state board and the LDE in developing and implementing policies related to the coordination of services for students with disabilities.

B. The advisory panel shall conduct its activities according to procedures prescribed by IDEA guidelines for state special education advisory panels.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2051 (October 2008), amended LR 38:769 (March 2012).

Catherine R. Pozniak
Executive Director

1203#035

RULE

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for
Nonpublic School Administrators
(LAC 28:LXXIX.2109, 2317, 2321, 2323, and 2331)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §2109. High School Graduation Requirements, §2317. Foreign Languages, §2321. Journalism, §2323. Mathematics, and §2331. Social Studies. These policy revisions change the name of the American history course to U.S. history and provide more course-taking options for students. These revisions were requested by nonpublic schools and the nonpublic school commission.

Title 28

EDUCATION

Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators—Programs of Study

Chapter 21. Curriculum and Instruction

Subchapter C. Secondary Schools

§2109. High School Graduation Requirements

A. - C.3.e. ...

4. Social Studies—3 units, shall be U.S. history; 1/2 unit of civics, 1/2 unit of free enterprise or 1 full unit of civics or AP American government; and one of the

following: world history, world geography, western civilization, or AP European history.

C.5. - D.4. ...

E. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Core 4 Curriculum, the minimum course requirements shall be the following:

1. English—4 units, shall be English I, II, III, and IV;
2. mathematics—4 units, shall be:
 - a. algebra I (1 unit) or algebra I-Pt. 2;
 - b. geometry;
 - c. algebra II;
 - d. the remaining unit shall come from the

following:

- i. financial mathematics;
- ii. math essentials;
- iii. advanced mathematics-pre-calculus;
- iv. advanced mathematics-functions and statistics;
- v. pre-calculus;
- vi. calculus;
- vii. probability and statistics;
- viii. discrete mathematics;
- ix. AP Calculus BC; or
- x. a locally-initiated elective approved by BESE

as a math substitute.

3. Science—4 units, shall be:

- a. biology;
- b. chemistry;
- c. 2 units from the following courses:
 - i. physical science;
 - ii. integrated science;
 - iii. physics I;
 - iv. physics of technology I;
 - v. aerospace science;
 - vi. biology II;
 - vii. chemistry II;
 - viii. earth science;
 - ix. environmental science;
 - x. physics II;
 - xi. physics of technology II;
 - xii. agriscience II;
 - xiii. anatomy and physiology; or
 - xiv. a locally initiated elective approved by BESE

as a science substitute.

(a). Students may not take both integrated science and physical science.

(b). Agriscience I is a prerequisite for agriscience II and is an elective course.

4. Social Studies—4 units, shall be:

- a. 1 unit of civics or AP American government, or 1/2 unit of civics or AP American Government and 1/2 unit of free enterprise;
- b. 1 unit of U.S. history;
- c. 1 unit from the following:
 - i. world history;
 - ii. world geography;
 - iii. western civilization; or
 - iv. AP European history;
- d. 1 unit from the following:
 - i. world history;
 - ii. world geography;
 - iii. western civilization;
 - iv. AP European history;

- v. law studies;
 - vi. psychology;
 - vii. sociology;
 - viii. African American studies; or
 - ix. religion I, II, III, or IV.
5. Health and Physical Education—2 units.
6. Foreign Language—2 units, shall be 2 units from the same foreign language or 2 speech courses.
7. Arts—1 unit, shall be 1 unit of art (§2305), dance (§2309), media arts (§2324), music (§2325), theatre, or fine arts survey.
- NOTE: Students may satisfy this requirement by earning half credits in two different arts courses.
8. Electives—3 units.
9. Total—24 units.

F. For incoming freshmen in 2009-2010 and beyond who are completing the Louisiana Basic Core Curriculum, the minimum course requirements for graduation shall be the following.

1. English—4 units, shall be English I, II, III, and IV or senior applications in English
2. Mathematics—4 units, shall be:
 - a. algebra I (1 unit) or algebra I-pt. 1 and algebra I-pt. 2 (2 units);
 - b. geometry;
 - c. the remaining units shall come from the following:
 - i. algebra II;
 - ii. financial mathematics;
 - iii. math essentials;
 - iv. advanced mathematics-pre-calculus;
 - v. advanced mathematics-functions and statistics;
 - vi. pre-calculus;
 - vii. calculus;
 - viii. probability and statistics;
 - ix. discrete mathematics, or
 - x. a locally initiated elective approved by BESE as a math substitute.
3. Science—3 units, shall be:
 - a. biology;
 - b. 1 unit from the following physical science cluster:
 - i. physical science;
 - ii. integrated science;
 - iii. chemistry I;
 - iv. physics I;
 - v. physics of technology I;
 - c. 1 unit from the following courses:
 - i. aerospace science;
 - ii. biology II;
 - iii. chemistry II;
 - iv. earth science;
 - v. environmental science;
 - vi. physics II;
 - vii. physics of technology II;
 - viii. agriscience II;
 - ix. anatomy and physiology;
 - x. an additional course from the physical science cluster; or
 - xi. a locally initiated elective approved by BESE as a science substitute.

(a). Students may not take both integrated science and physical science.

- (b). Agriscience I is a prerequisite for agriscience II and is an elective course.
4. Social Studies—3 units, shall be:
 - a. 1 unit of civics and/or AP American government, or 1/2 unit of civics or AP American government and 1/2 unit of free enterprise;
 - b. 1 unit of U.S. history;
 - c. 1 unit from the following: world history, world geography, western civilization, or AP European history.
5. Health and physical education—2 units.
6. Electives—8 units.
7. Total—24 units.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2351 (November 2003), amended LR 30:2776 (December 2004), LR 31:3081 (December 2005), LR 34:2099 (October 2008), LR 36:2849 (December 2010), LR 38:769 (March 2012).

Chapter 23. High School Program of Studies
§2317. Foreign Languages

A. The foreign language course offerings shall be as follows.

Course Title	Unit(s)
Chinese I, II, III, IV	1 each
French I, II, III, IV, V	1 each
German I, II, III, IV, V	1 each
Greek I, II, III, IV	1 each
Hebrew I, II, III, IV	1 each
Italian I, II, III, IV, V	1 each
Latin I, II, III, IV, V	1 each
Russian I, II, III, IV, V	1 each
Spanish I, II, III, IV, V	1 each
Japanese I, II, III, IV	1 each
Hebrew I, II, III, IV	1 each
Arabic I, II, III, IV	1 each

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2354 (November 2003), amended LR 31:3086 (December 2005), LR 38:770 (March 2012).

§2321. Journalism

A. Journalism course offerings shall be as follows.

Course Title	Unit(s)
Journalism I, II	1 each
Publications I, II (Yearbook)	1 each
Publications I, II (Newspaper)	1 each

1. Teachers must be qualified in journalism to teach journalism.
2. Teachers qualified in the areas of journalism, English, and/or business education are qualified to teach publications I and II (yearbook).
3. Teachers qualified in the areas of journalism, and/or English are qualified to teach publications I and II (newspaper).
4. Publications I is a prerequisite to publications II.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2354 (November 2003), amended LR 31:3086 (December 2005), LR 38:770 (March 2012).

§2323. Mathematics

A. Effective for 2009-2010 incoming freshmen, 4 units of mathematics shall be required for graduations. All students must complete the following:

1. algebra I (1 unit) or algebra I-pt. 1 and algebra I-pt. 2 (2 units);
2. geometry;
3. the remaining units shall come from the following:
 - a. algebra II;
 - b. financial mathematics;
 - c. math essentials;
 - d. advanced mathematics I;
 - e. advanced mathematics II;
 - f. pre-calculus;
 - g. calculus;
 - h. probability and statistics;
 - i. discrete mathematics;
 - j. AP Calculus BC; or
 - k. a locally-initiated elective approved by BESE as a math substitute.

B. Three units of mathematics are required for graduation. Effective for incoming freshmen between 2005-2006 and 2008-2009, all students must:

1. complete one of the following:
 - a. algebra I (1 unit); or
 - b. algebra I-pt. 1 and algebra I-pt. 2 (2 units); or
 - c. integrated mathematics I (1 unit);
2. the remaining unit(s) shall come from the following:
 - a. integrated mathematics II;
 - b. integrated mathematics III;
 - c. geometry;
 - d. algebra II;
 - e. financial mathematics;
 - f. advanced mathematics I;
 - g. advanced mathematics II;
 - h. pre-calculus;
 - i. calculus;
 - j. probability and statistics;
 - k. discrete mathematics.

C. For incoming freshmen between 1998 and 2004-2005, the three required mathematics units shall be selected from the following courses and may include a maximum of two entry level courses (designated by E):

1. introductory algebra/geometry (E);
2. algebra I-part 1 (E);
3. algebra 1-part 2;
4. integrated mathematics I (E);
5. integrated mathematics II;
6. integrated mathematics III;
7. applied mathematics 1 (E);
8. applied mathematics II;
9. applied mathematics III;
10. algebra I (E);
11. geometry;
12. algebra II;
13. financial mathematics;
14. advanced mathematics I;
15. advanced mathematics II;

16. pre-calculus;
17. calculus;
18. probability and statistics; and
19. discrete mathematics.

Course Title	Unit(s)
Advanced Mathematics I	1
Advanced Mathematics II	1
Algebra I	1
Algebra I-Part I	1
Algebra I-Part II	1
Algebra II	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Integrated Mathematics I	1
Integrated Mathematics II	1
Integrated Mathematics III	1
Pre-Calculus	1
Probability and Statistics	1
Math Essentials	1
AP Calculus BC	1

D. Financial mathematics may be taught by the Business Education Department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2354 (November 2003), amended LR 30:2776 (December 2004), LR 31:3086 (December 2005), LR 34:2101 (October 2008), LR 36:2849 (December 2010), LR 38:771 (March 2012).

§2331. Social Studies

A. Three units of social studies shall be required for graduation. They shall be:

1. U.S. history;
2. 1 unit of civics, and/or AP American government, or 1/2 unit of civics or AP American Government and 1/2 unit of free enterprise; and
3. one of the following: world history, world geography, western civilization, or AP European history. Social studies course offerings shall be as follows.

Course Title	Unit(s)
African American Studies	1
American Government	1
U.S. History	1
Civics	1 (or 1/2)
Economics	1
Free Enterprise System	1/2
Law Studies	1
Psychology	1
Sociology	1
Western Civilization	1
World Geography	1
World History	1
AP European History	1

B. Economics may be taught by a teacher qualified in business education.

C. Free enterprise shall be taught by teachers qualified in social studies, business education, or distributive education.

D. One unit of religious studies (§2335) may be used as the fourth social studies course required for the Louisiana Core 4 curriculum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2356 (November 2003), amended LR 31:3088 (December 2005), LR 34:2102 (October 2008)), LR 37:2144 (July 2011), LR 38:771 (March 2012).

Catherine R. Pozniak
Executive Director

1203#036

RULE

Board of Elementary and Secondary Education

Organization—Advisory Councils
(LAC 28:I.503)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended the Louisiana Administrative Code, Title 28, Part I, Chapter 5. Organization, Section 503. Advisory Councils. The changes to Louisiana Administrative Code, Title 28, Part I, Section 503, Paragraphs C.1, C.2 and C.3 include:

- changing “Nonpublic School Commission” to “Nonpublic School Council;”
- expanding membership of the Superintendents’ Advisory Council to include the superintendent of the recovery school district (RSD), and the president of the Louisiana Association of School Superintendents (LASS);
- eliminating BESE’s Special Education Advisory Council (SEAC) and establish the State Special Education Advisory Panel as BESE’s advisory council for policy affecting special education;
- establishing renewable two-year, staggered terms for all council appointments made by board members;
- allowing council members to designate proxies that retain voting privileges;
- strengthening Louisiana residency and attendance requirements.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 5. Organization**

§503. Advisory Councils

A. - C.1.c.iv. ...

2. Nonpublic School Council

a. - c. ...

i. Advise the board relative to standards and guidelines affecting nonpublic schools.

2.c.ii. - 3.a. ...

b. Membership: 24 members as follows:

i. two city, parish, or other local public school superintendents recommended by each of the eight elected board members, within his/her district, if possible. The three at-large members should each appoint two city, parish, or other local public school superintendents from BESE Districts 3-8, with no more than one appointment per BESE district. It is recommended that the composition reflect all

sizes of systems and be equitable in the regions represented, to the extent possible;

ii. the superintendent of the recovery school district (RSD) who is appointed by the state superintendent of education;

iii. the president of the Louisiana Association of School Superintendents (LASS), who shall serve as chair of the council;

iv. attendance. Members who cannot attend a meeting may designate a proxy from his/her BESE district to represent him/her;

v. expenses. Members shall not receive reimbursement for travel expenses from the board.

c. - c.ii. ...

4. - 4.c.vii. Repealed.

4. Textbook/Media/Library Advisory Council

a. Authority: per BESE policy.

b. Membership: 14 members as follows:

i. one member of the legislature (state senator), recommended by the senate president;

ii. one member of the legislature (state representative), recommended by the speaker of the house;

iii. one member recommended by the governor;

and

iv. 11 members, one member recommended by each board member, from the following categories:

(a). one teacher, grades K-6;

(b). one teacher, grades 7-12;

(c). one teacher (any grade) or coordinator of technology;

(d). two school librarians;

(e). one curriculum supervisor;

(f). two textbook supervisors;

(g). one parent or business representative;

(h). one LEA superintendent; and

(i). one school principal.

c. Referrals/Responsibilities

i. Advise the board on policy and procedure issues relating to the textbook adoption process.

ii. Consider all matters referred by the board or the LDE.

D. Special Advisory Councils/Task Forces/Commissions/Study Groups. Special advisory groups may be created by the board with a limited charge and scope to study a specific topic as referred by the board. Such groups shall adhere to all advisory council officers, membership, and meetings policies, as described herein.

E Officers. Unless otherwise provided by state or federal law or board policy, each advisory council shall select from among its membership in attendance a chair and a vice-chair. Elections shall be held annually at the first meeting in a fiscal year, and the councils shall report election results to the board.

F. Membership

1. Terms. Unless otherwise provided by state or federal law, persons appointed by board members shall serve two-year staggered appointments at the pleasure of their recommending authority. Persons appointed by organizations and agencies other than BESE shall serve terms determined by the appointing authority. All appointments shall be made in July of the appropriate year, as determined by BESE staff. A council member may be removed without cause by the

board member recommending the appointment, by his/her successor, or by the recommending agency at any time. Appointees must maintain employment/qualifications appropriate to the organizational category being represented. Once a member retires, becomes employed in a different capacity, or otherwise fails to maintain eligibility, the member shall become ineligible to continue to serve and shall be replaced.

2. Vacancies. A vacancy in an appointed position shall occur if an appointee, for any reason, is unable to serve the full extent of his/her term. Appointments to fill vacancies shall be considered interim appointments and shall be ratified by the board.

3. Expenses. Members of advisory councils may be entitled to reimbursement for travel expenses if specified by statute or not prohibited by board policy, pending availability of funds. Requests for reimbursement for expenses shall be submitted in accordance with the regulations promulgated by the commissioner of administration in the *Louisiana Travel Guide*.

4. Quorum. Unless otherwise provided, a quorum is a majority of the appointed membership. In the absence of a quorum, the advisory council may take action, but minutes submitted to the board shall indicate that the recommendations are being presented without the required quorum being present. When it is known beforehand that a quorum is unlikely, the council chair shall be so notified and the meeting shall be canceled.

5. Proxy. Any person serving on an advisory council who cannot attend a scheduled meeting may designate a person to attend as his/her proxy, as long as the appointing authority does not object. Proxies shall retain voting privileges. To receive reimbursement for travel and other expenses, a proxy must be properly designated by the active member and recorded in the minutes as being present.

6. Attendance Policy

a. Appointed members are expected to attend all scheduled meetings of an advisory body. Unless otherwise provided, if a member is unable to attend a meeting, a request for an excused absence should be submitted to the council chair or the executive director one week prior to the meeting and a proxy may be named by the appointed member to serve for a total of three meetings. A council member shall be removed and his seat declared vacant if he is no longer a legal resident of Louisiana, fails to remain active in or is no longer employed by the organization or agency he was appointed to represent, or misses more than two meetings, unless excused prior to the meeting by the council chair.

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

i. name of the council member and council on which serving;

- ii. date of the meeting; and
- iii. board policy on attendance.

G. Meetings

1. Each advisory council shall meet as scheduled in order to consider referrals from the board or the LDE. Special meetings shall be by call of the board, and emergency meetings may be called at the discretion of the executive director.

2. When possible, regular meeting dates shall be scheduled one year in advance and shall be determined by the executive director or his/her designee. When meetings cannot be regularly scheduled, the executive director or his/her designee shall set each meeting date in consultation with the chair of each council.

3. Notices of council meetings shall be distributed to council members by the board staff at least 10 days in advance of a meeting, calendar permitting. All council meetings shall be conducted in accordance with the Louisiana Open Meetings Law (R.S. 42:11). In the event that no items have been referred by the Board to an advisory council for consideration, there are no items pending on an advisory council agenda, and the LDE has no items to bring forward to the advisory council at least 10 days prior to a scheduled meeting, the meeting shall be cancelled and the members shall be notified of the cancellation.

4. In all particulars, except for those listed in these rules and procedures, the business in advisory councils shall be conducted according to *Robert's Rules of Order*.

5. Every motion passed by an advisory council, whether or not made as a recommendation, shall be made as a main motion and must be seconded. All motions must be voted on and roll call votes may be requested by any of the membership in attendance at a meeting.

a. Requests from advisory councils for data/reports must be made in the form of a motion, requesting that the board direct the LDE or BESE staff to provide such information to the council making the request.

6. The minutes and reports of each advisory council shall be presented to the board's executive director for referral to the board. Actions taken in response to referrals shall be forwarded to the appropriate committee(s). A committee, after consideration of the recommendations of the advisory council, shall report its recommendations to the board for final action.

7. All meetings of advisory councils shall be considered official functions of the board to assist in the execution of board responsibilities and duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:6(A)(15), R.S. 17:24.4, R.S. 17:11, 34 CFR 300.650-652, and R.S. 17:1954.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:416 (March 2008), amended LR 35:1874 (September 2009), LR 36:2851 (December 2010), LR 37:2140 (July 2011), LR 38:772 (March 2012).

Catherine R. Pozniak
Executive Director

1203#037

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Hazardous Waste Technical Corrections and Clarifications (LAC 33:V.108, 109, 307, 1107, 1109, 1111, 1516, 2299, 2519, 2603, 4105, 4139, 4511, 4901 and 4903)(HW110ft)

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 regulations, LAC 33:V.108, 109, 307, 1107, 1109, 1111, 1516, 2299, 2519, 2603, 4105, 4139, 4511, 4901 and 4903 (HW110ft).

This Rule is identical to federal regulations found in, 40CFR262.10 and Appendix I; 40CFR261.1(c)(10) and Table 1; 40 CFR 261.2(c).Table 1; 40 CFR 261.4(a)(17)(vi); 40 CFR 261.5(b), (e)-(g)(2); 40 CFR 261.6(a)(2), (a)(2)(ii), and (a)(3); 40 CFR 261.6(c)(1) and (d); 40 CFR 261.7(a)(1) and (2) and (b)(1) and (3); 40 CFR 261.23(a)(8); 40 CFR 261.30(c) and (d); 40 CFR 261.31(a); 40 CFR 261.32(a).Table; 40 CFR 261.33(f); 40 CFR 261.Appendix VII; 40 CFR 262.10(f), (j)(1), and (k); 40 CFR 262.11(d); 40 CFR 262.23(f)-(f)(4); 40 CFR 262.34(a), (a)(1)(iv)(B), (a)(2), (a)(4) and (5); 40 CFR 262.34(b), (c)(1) and (2), (d)(4), (f), and (i); 40 CFR 262.41(b); 40 CFR 262.42(a)(1) and (2) and (c)-(c)(2); 40 CFR 262.60(b); 40CFR263.12; 40CFR264.52(b); 40CFR264.56(d)(2); 40 CFR 264.72(e)(6), (f)(1), (7) and (8); 40 CFR 264.314(d); 40 CFR 264.316(b); 40 CFR 264.552(a)(3)(ii)-(iv), (e)(4)(iv)(F); 40 CFR 265.52; 40 CFR 265.56(d)(2); 40 CFR 265.72(e)(6), (f)(1) and (7) and (8); 40 CFR 265.314(d); 40 CFR 265.316(b); 40 CFR 266.20(b); 40 CFR 266.22; 40 CFR 266.70(d); 40 CFR 266.80(b); 40 CFR 266.101(c)(1) and (2); 40 CFR 268.40.Table; 40 CFR 268.48.UTS Table; and 40 CFR 270.4(a) which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule makes a number of technical changes that correct existing errors in the hazardous waste regulations that occurred over time in numerous final rules published in the *Federal Register*. Examples of the types of items corrected include typographical errors, incorrect or outdated citations and omissions. Some of the corrections are necessary to make conforming changes to all appropriate parts of the RCRA hazardous waste regulations for new rules that have since been promulgated. In addition, these changes clarify existing parts of the hazardous waste regulatory program and update references to the Department of Transportation (DOT) regulations that have changed since the publication of various RCRA final rules. This action is needed in order for the state hazardous waste regulations to maintain equivalency with the federal regulations.

The basis and rationale for this Rule is to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) 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

§108. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

A. - E. ...

1. a total of one kg of acute hazardous wastes listed in LAC 33:V.4901.B or E; or

2. a total of 100 kg of any residue or contaminated soil, waste, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous wastes listed in LAC 33:V.4901.B or E.

COMMENT: *Full regulation* means those regulations applicable to generators of 1,000 kg or greater of hazardous waste in a calendar month.

F. - F.5. ...

G. In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kg or less of hazardous waste during a calendar month to be excluded from full regulation under this Section, the generator must comply with the following requirements:

1. ...

2. the conditionally exempt small quantity generator may accumulate hazardous waste on-site. If it accumulates at any time more than a total of 1000 kg of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of LAC 33:V.Chapter 11 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of LAC 33:V.Chapters 3-9, 13-37, 41, 43, 51, and 53, and the applicable notification requirements of LAC 33:V.105.A. The time period of LAC 33:V.1109.E for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kg; and

G.3. - J. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:706, 716 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 32:606 (April 2006), LR 36:2554 (November 2010), LR 38:774 (March 2012).

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Empty Container—

1.a. any hazardous waste remaining in either of the following is not subject to regulation under LAC 33:V.Chapters 1-38, 41, 43, 49, or to the notification requirements of LAC 33:V.105.A:

i. - ii. ...

b. any hazardous waste in either of the following is subject to regulation under LAC 33:V.Chapters 1-38, 41, 43, 49, or to the notification requirements of LAC 33:V.105.A:

i. - ii. ...

2.a. a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acutely hazardous waste listed in LAC 33:V.4901.B or E, is empty if:

2.a.i.(a). - 2.b. ...

c. a container or an inner liner removed from a container that has held an acutely hazardous waste listed in LAC 33:V.4901.B or E, is empty if:

i. - iii. ...

New Hazardous Waste Management Facility or New Facility—a facility which began operation, or for which construction commenced after November 19, 1980.

Solid Waste—

1.a. - 6. ...

Table 1				
	Use Constituting Disposal	Energy Recovery/ Fuel	Reclamation (Except as Provided in LAC 33:V.105.D.1.q for Mineral Processing Secondary Materials)	Speculative Accumulation
	(1)	(2)	(3)	(4)

[See Prior Text in Spent Materials - Commercial Chemical Products (listed in LAC 33:V.4901.E and F)]				
Scrap metal that is not excluded under LAC 33:V.105.D.1.m.	*	*	*	*

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, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), repromulgated LR 36:1535 (July 2010), amended LR 36:2554 (November 2010), LR 38:774 (March 2012).

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

§307. Effect of a Permit

A. - A.4. ...

B. A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in LAC

33:V.323.B.2 and 3, or the permit may be modified upon the request of the permittee as set forth in LAC 33:V.321.C.

C. The issuance of a permit does not authorize any injury to persons or property, or invasion of other private rights, or any infringement of state or local law or regulations.

D. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 25:435 (March 1999), amended by the Office of the Secretary, Legal Affairs Division, LR 38:775 (March 2012).

Chapter 11. Generators

Subchapter A. General

§1107. The Manifest System

A. - D.6. ...

7. For rejected shipments of hazardous waste or container residues contained in non-empty containers that are returned to the generator by the designated facility, following the procedures of LAC 33:V.1516.C.6, the generator shall:

a. sign either:

i. Item 20 of the new manifest, if a new manifest is used for the returned shipment; or

ii. Item 18c of the original manifest, if the original manifest is used for the returned shipment;

b. provide the transporter a copy of the manifest;

c. within 30 days of delivery of the rejected shipment or container residues contained in non-empty containers, send a copy of the manifest to the designated facility that returned the shipment to the generator; and

d. retain at the generator's site a copy of each manifest for at least three years from the date of delivery.

E. - E.2. ...

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 12:319 (May 1986), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:266, 267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:89 (January 2007), repromulgated LR 33:281 (February 2007), amended LR 33:2101 (October 2007), LR 34:622 (April 2008), LR 38:775 (March 2012).

§1109. Pre-Transport Requirements

A. - D. ...

E. Accumulation Time

1. A generator who generates 1,000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status, provided that:

a. - a.iv.(a). ...

b. generators accumulating hazardous waste on-site for 90 days or less without a permit or without having interim status are exempt from all the requirements in LAC 33:V.Chapter 43.Subchapters F and G, except for LAC 33:V.4379 and 4385;

c. the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container and tank;

d. ...

e. the generator complies with the requirements for owners or operators in LAC 33:V.4319.Chapter 43.Subchapters B and C, and with all applicable requirements under LAC 33:V.Chapter 22.Subchapter A.

2. A generator of 1000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the permitting requirements as specified in LAC 33:V.Subpart 1 unless he has been granted an extension to the 90-day period. Such an extension may be granted by the administrative authority if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, or uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the administrative authority on a case-by-case basis.

3. ...

4. A generator may accumulate as much as 55 gallons of hazardous waste listed in LAC 33:V.4901.B, C, D, F, or LAC 33:V.4903, or one quart of acutely hazardous waste listed in LAC 33:V.4901.E in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Paragraph E.1 or 7 of this Section provided he complies with LAC 33:V.2103, 2105, 2107.A and marks

his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

5. A generator who accumulates either hazardous waste or acutely hazardous waste listed in LAC 33:V.4901.B, Table 1 or LAC 33:V.4901.E in excess of the amounts listed in Subparagraph E.4 of this Section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with Paragraph E.1 of this Section or other applicable provisions of this Chapter.

6. - 7.b. ...

c. the generator complies with the requirements of Subparagraphs E.1.c and d of this Section; the requirements of LAC 33:V.Chapter 43.Subchapter B and with all applicable requirements of LAC 33:V.Chapter 22.Subchapter A;

E.7.d. - F.2. ...

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 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709, 716 (May 2001), LR 27:1014 (July 2001), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:2102 (October 2007), LR 34:622 (April 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended LR 38:776 (March 2012).

§1111. Recordkeeping and Reporting

A. - B.2. ...

C. Exception Reporting

1. A generator of 1000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste.

2. A generator of 1000 kg or greater of hazardous waste in a calendar month, or greater than 1 kg of acute hazardous waste listed in LAC 33:V.4901.B or E in a calendar month, must submit an exception report to the Office of Environmental Services if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report must include:

2.a. - 3.Note. ...

4. For rejected shipments of hazardous waste or container residues contained in non-empty containers that are forwarded to an alternate facility by a designated facility using a new manifest (following the procedures of LAC

33:V.1516.C.5.a.i-vi.), the generator must comply with the requirements of Paragraph C.1 or 3 of this Section, as applicable, for the shipment forwarding the material from the designated facility to the alternate facility instead of for the shipment from the generator to the designated facility. For purposes of Paragraph C.1 or 2 of this Section for a shipment forwarding such waste to an alternate facility by a designated facility:

a. the copy of the manifest received by the generator must have the hand written signature of the owner or operator of the alternate facility in place of the signature of the owner or operator of the designated facility; and

b. the 35/45/60-day time frames begin the date the waste was accepted by the initial transporter forwarding the hazardous waste shipment from the designated facility to the alternate facility.

D. - E.3. ...

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 16:220 (March 1990), LR 17:365 (April 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2102 (October 2007), LR 38:776 (March 2012).

Chapter 15. Treatment, Storage, and Disposal Facilities

§1513. Contingency Plan and Emergency Procedures

A. - B.1. ...

2. If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR Part 112, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with these requirements. The owner or operator may develop one contingency plan that meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

B.3. - F.9.g. ...

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 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2456 (October 2005), LR 33:2104 (October 2007), LR 34:993 (June 2008), LR 35:1879 (September 2009), LR 38:777 (March 2012).

§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities

A. - C.5.a.v. ...

vi. Sign the generator's/offerror's certification to certify that the waste has been properly packaged, marked, and labeled, and is in condition for transportation, and mail a signed copy of the manifest to the generator identified in Item 5 of the new manifest.

5.b. - 6.a. ...

i. Write the facility's EPA ID number in Item 1 of the new manifest. Write the facility's name and mailing address in Item 5, unless the mailing address is different, then write the facility's site address in the designated space for Item 5 of the new manifest.

ii. - vi. ...

b. For full load rejections made while the transporter remains at the facility, the facility may return the rejected shipment to the generator with the original manifest by completing Items 18a and 18b of the original manifest and supplying the generator's information in the Alternate Facility block. The facility must retain a copy of this manifest for its records and give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with Clauses C.6.a.i-vi and Subparagraph C.6.c of this Section.

c. For full or partial load rejections and container residues contained in non-empty containers that are returned to the generator, the facility must also comply with the exception reporting requirements in LAC 33:V.1111.C.

C.7. - D.7.Comment. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:1012 (June 2008), LR 38:777 (March 2012).

Chapter 22. Prohibitions on Land Disposal

Subchapter B. Hazardous Waste Injection Restrictions

§2299. Appendix-Tables 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

Table 2. Treatment Standards for Hazardous Wastes

Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters	Non-Wastewaters
		Common Name	CAS ² Number	Concentration in mg/L ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/L TCLP" or Technology Code ⁴
*** [See Prior Text in D001 ⁹ - K151]					
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. ¹⁰	Acetonitrile	75-05-8	5.6	1.8
		Acetophenone	98-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10

Table 2. Treatment Standards for Hazardous Wastes

Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters	Non-Wastewaters
		Common Name	CAS ² Number	Concentration in mg/L ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/L TCLP" or Technology Code ⁴
	(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl <i>n</i> -butylcarbamate.)	Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
		Toluene	108-88-3	0.080	10
		Triethylamine	121-44-8	0.081	1.5
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes.	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
	(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl <i>n</i> -butylcarbamate.)	Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		o-Phenylenediamine	95-54-5	0.056	5.6
		Pyridine	110-86-1	0.014	16
		Triethylamine	121-44-8	0.081	1.5
K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes.	Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbenzadim	10605-21-7	0.056	1.4
	(This listing does not apply to wastes generated from the manufacture of 3-iodo-2-propynyl <i>n</i> -butylcarbamate.)	Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2

[See Prior Text K159 - U411]

Footnote 1. - Footnote 12. ...

NOTE: NA means Not Applicable.

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 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:834 (September 1996), LR 23:566 (May 1997), LR 24:301 (February 1998), LR 24:670 (April 1998), LR 24:1732 (September 1998), LR 25:451 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:282 (February 2000), LR 27:295 (March 2001), LR 29:322 (March 2003), LR 30:1682 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:828 (May 2006), LR 32:1843 (October 2006), LR 34:625 (April 2008), LR 34:1014 (June 2008), LR 38:777 (March 2012).

Chapter 25. Landfills

§2519. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

A. - A.1. ...

2. the inside containers must be overpacked in an open head LDPS specification metal shipping container LAC 33:V.Subpart 2.Chapter 101 of no more than 416-liter (110-gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with LAC 33:V.2515.E, to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and sorbent material;

3. - 6. ...

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, in LR 10:200 (March 1984), amended

LR 16:1057 (December 1990), LR 21:266 (March 1995), amended by the Office of the Secretary, Legal Affairs Division, LR 38:778 (March 2012).

Chapter 26. Corrective Action Management Units and Special Provisions for Cleanup

§2603. Corrective Action Management Units (CAMUs)

A. - A.3.a. ...

b. The requirements in LAC 33:V.2515.B for placement of containers holding free liquids in landfills apply to placement in a CAMU except when placement facilitates the remedy selected for the waste.

c. ...

d. The absence or presence of free liquids in either a containerized or a bulk waste must be determined in accordance with LAC 33:V.2515.C. Sorbents used to treat free liquids in CAMUs must meet the requirements of LAC 33:V.2515.E.

A.4. - E.4.d.v. ...

vi. Alternatives to TCLP. For metal-bearing wastes for which metals removal treatment is not used, the administrative authority may specify a leaching test other than the TCLP (Method 1311, EPA Publication SW-846, as incorporated by reference in LAC 33:V.110.C.3.e) to measure treatment effectiveness, provided the administrative authority determines that an alternative leach testing protocol is appropriate for use and that the alternative more accurately reflects conditions at the site that affect leaching.

E.4.e. - K. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:1192 (June 2002), amended LR 29:323 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:627 (April 2008), LR 34:1014 (June 2008), LR 38:779 (March 2012).

Chapter 41. Recyclable Materials

§4105. Requirements for Recyclable Material

A. ...

1. The following recyclable materials are not subject to regulation under LAC 33:V.Subpart 1, and are not subject to the notification requirements of LAC 33:V.105 or Section 3010 of RCRA:

a. - d.iii. ...

2. The following recyclable materials are not subject to the requirements of this Section but are regulated under LAC 33:V.4139, 4141, 4143, and 4145, and all applicable provisions as provided in LAC 33:V.Chapters 1, 3, 5, 7, 22, 27, 31, 42, and 43:

a. ...

b. hazardous wastes burned, as defined in LAC 33:V.3001.A, in boilers and industrial furnaces that are not regulated under LAC 33:V.Chapter 31 or 43.Subchapter N;

A.2.c. - E. ...

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 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837

(September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), LR 24:1108 (June 1998), LR 24:1742 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:608 (April 2006), LR 38:779 (March 2012).

§4139. Recyclable Materials Used in a Manner Constituting Disposal

A. - B.1. ...

2. such products meet the applicable treatment standards in LAC 33:V.Chapter 22.Subchapter A (or applicable prohibition levels in LAC 33:V.2209 or 2215, where no treatment standards have been established), or Section 3004(d) of RCRA for each recyclable material (i.e., hazardous waste constituent) that they contain and the recycler complies with LAC 33:V.2247.E.

C. - D. ...

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 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 17:367 (April 1991), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 22:21 (January 1996), repromulgated LR 22:100 (February 1996), amended LR 23:566 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1743 (September 1998); amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1684 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:610 (April 2006), LR 38:779 (March 2012).

Chapter 43. Interim Status

Subchapter M. Landfills

§4511. Disposal of Small Containers of Hazardous Waste in Overpacked Drums (Lab Packs)

A. - A.1. ...

2. The inside containers must be overpacked in an open head LDPS specification metal shipping container (LAC 33:V.Subpart 2.Chapter 101) of no more than 416-liter (110-gallon) capacity and surrounded by, at a minimum, a sufficient quantity of sorbent material, determined to be nonbiodegradable in accordance with LAC 33:V.2515.E, to completely sorb all of the liquid contents of the inside containers. The metal outer container must be full after packing with inside containers and sorbent material.

3. - 6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:1057 (December 1990), LR 18:723 (July 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1745 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 38:779 (March 2012).

Chapter 49. Lists of Hazardous Wastes

NOTE: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).

§4901. Category I Hazardous Wastes

A. ...

* * *

1. Each hazardous waste listed in this Chapter is assigned an EPA Hazardous Waste number, which precedes the name of the waste. This number must be used in complying with the notification requirements of Section 3010 or 105.A of the Act and certain recordkeeping and

reporting requirements under LAC 33:V.Chapters 3-38, 41, and 43.

2. The following hazardous wastes listed in LAC 33:V.4901.B are subject to the exclusion limits for acutely hazardous wastes established in LAC 33:V.108: EPA Hazardous Wastes Numbers F020, F021, F022, F023, F026, and F027.

B. - F.Comment. ...

Table 4. Toxic Wastes (Alphabetical Order by Substance)		
EPA Hazardous Waste Number	Chemical Abstract Number	Hazardous Waste (Substance)
[See Prior Text in U394 – A2213 – U249 – Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10 percent or less] ¹ CAS Number given for parent compound only.		

Table 4. Toxic Wastes (Numerical Order by EPA Hazardous Waste Number)		
EPA Hazardous Waste Number	Chemical Abstract Number	Hazardous Waste (Substance)
* * *		
[See Prior Text in U001 – Acetaldehyde (I) – U238 – Ethyl Carbamate (urethane)]		
U239	1330-20-7	Benzene, dimethyl-(I)
* * *		
[See Prior Text in U239 – Xylene(I) – See F027 – 2,4,6-Trichlorophenol]		
¹ CAS Number given for parent compound only.		

G. ...

Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste
[See Prior Text in EPA Hazardous Waste Number F001 – EPA Hazardous Waste Number K061]
EPA Hazardous Waste Number K062 Hexavalent chromium; lead
EPA Hazardous Waste Number K069 Hexavalent chromium; lead; cadmium
[See Prior Text in EPA Hazardous Waste Number K071 – EPA Hazardous Waste Number K087]
EPA Hazardous Waste Number K088 Cyanide (complexes)
EPA Hazardous Waste Number K093 Phthalic anhydride; maleic anhydride
[See Prior Text in EPA Hazardous Waste Number K094 – EPA Hazardous Waste Number K181]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq. and specifically 2180.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, 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 14:426 (July 1988), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829, 840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR

23:1522 (November 1997), LR 24:321 (February 1998), LR 24:686 (April 1998), LR 24:1754 (September 1998), LR 25:487 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:304 (March 2001), LR 27:715 (May 2001), LR 28:1009 (May 2002), LR 29:324 (March 2003), amended by the Office of Environmental Assessment, LR 31:1573 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006), LR 33:1627 (August 2007), LR 34:635 (April 2008), LR 34:1020 (June 2008), LR 34:2392 (November 2008), LR 36:2555 (November 2010), LR 38:780 (March 2012).

§4903. Category II Hazardous Wastes

A. - D.7. ...

8. It is a forbidden explosive as defined in 49 CFR 173.54, or is a Division 1.1, 1.2, or 1.3 explosive as defined in 49 CFR 173.50 and 173.53.

E. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 22:829 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 29:325 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 34:644 (April 2008), LR 34:1020 (June 2008), LR 38:780 (March 2012).

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Executive Counsel

1203#006

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

OECD Requirements—Export Shipments
of Spent Lead-Acid Batteries
(LAC 33:V.109, 1101, 1113, 1127,
1301, 1516, 1531 and 4145)(HW108ft)

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 regulations, LAC 33:V.109, 1101, 1113, 1127, 1301, 1516, 1531 and 4145 (HW108ft).

This Rule is identical to federal regulations found in 40 CFR 262.10(d), 40 CFR 262.55, 40 CFR 262.58(a)-(b), 40 CFR 262.80(a)-262.89(d), 40 CFR 263.10(d), 40 CFR 264.12(a)(2), 40 CFR 264.71(a)(3) and (d), 40 CFR 265.12(a)(2), 40 CFR 265.71(a)(3) and (d) and 40 CFR 266.80(a)Table, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule amends existing regulations regarding hazardous waste exports from and imports into the United States. This action is needed in order for the state hazardous waste regulations to maintain equivalency with the federal regulations. The basis and rationale for this Rule is to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) 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

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

Competent Authorities—the regulatory authorities of concerned countries having jurisdiction over *transboundary movements* of waste destined for *recovery operations*.

Consignee—Repealed.

Country of Export—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a from which a *transboundary movement of hazardous waste* is planned to be initiated, or is initiated.

Country of Import—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a to which a *transboundary movement of hazardous waste* is planned, or

takes place, for the purpose of submitting the waste to *recovery operations* therein.

Country of Transit—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a and b other than the exporting or importing country across which a *transboundary movement of hazardous waste* is planned or takes place.

Exporter—the person under the jurisdiction of the *country of export* who has, or will have at the time of the *transboundary movement*, possession or other forms of legal control of the waste and who proposes *transboundary movement* of the *hazardous waste* for the ultimate purpose of submitting it to *recovery operations*. When the United States (U.S.) is the *country of export*, *exporter* is interpreted to mean a person domiciled in the United States.

Exporting Country—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a from which a *transboundary movement* of waste is planned or has commenced.

Importer—the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the *country of import*.

Importing Country—any designated *OECD* member country listed in LAC 33:V.1113.I.1.a to which a *transboundary movement* of waste is planned or takes place for the purpose of submitting the waste to *recovery operations* therein.

Notifier—Repealed.

OECD—Organization for Economic Cooperation and Development.

Organization for Economic Cooperation and Development (OECD) Area—all land or marine areas under the national jurisdiction of any *OECD* member country listed in LAC 33:V.1113.I.1.a. When the regulations refer to shipments to or from an *OECD* country, this means *OECD* area.

Recognized Trader—a person who, with appropriate authorization of *concerned countries*, acts in the role of principal to purchase and subsequently sell waste; this person has legal control of such waste from time of purchase to time of sale; such a person may act to arrange and facilitate *transboundary movements* of waste destined for *recovery operations*.

Recovery Operations—activities leading to resource recovery, recycling, reclamation, direct reuse or alternative uses, which include the following operations.

Table 1	
Code	Recovery Operations
R1	Use as a fuel (other than in direct incineration) or other means to generate energy
R2	Solvent reclamation/regeneration
R3	Recycling/reclamation of organic substances that are not used as solvents
R4	Recycling/reclamation of metals and metal compounds

Table 1	
Code	Recovery Operations
R5	Recycling/reclamation of other inorganic materials
R6	Regeneration of acids or bases
R7	Recovery of components used for pollution abatement
R8	Recovery of components used from catalysts
R9	Used oil re-refining or other reuses of previously used oil
R10	Land treatment resulting in benefit to agriculture or ecological improvement
R11	Uses of residual materials obtained from any of the operations numbered R1-R10
R12	Exchange of wastes for submission to any of the operations numbered R1-R11
R13	Accumulation of material intended for any operation numbered R1-R12

* * *

Transboundary Movement—any movement of waste from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

* * *

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, 791 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:218, 220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000), LR 26:2465 (November 2000), LR 27:291 (March 2001), LR 27:708 (May 2001), LR 28:999 (May 2002), LR 28:1191 (June 2002), LR 29:318 (March 2003); amended by the Office of the Secretary, Legal Affairs Division, LR 31:2452 (October 2005), LR 31:3116 (December 2005), LR 32:606 (April 2006), LR 32:822 (May 2006), LR 33:1625 (August 2007), LR 33:2098 (October 2007), LR 34:71 (January 2008), LR 34:615 (April 2008), LR 34:1009 (June 2008), LR 34:1894 (September 2008), LR 34:2396 (November 2008), LR 36:1235 (June 2010), repromulgated LR 36:1535 (July 2010), amended LR 36:2554 (November 2010), LR 38:781 (March 2012).

Chapter 11. Generators

Subchapter A. General

§1101. Applicability

A. ...

B. Any person who exports or imports hazardous waste subject to the manifesting requirements of this Chapter, the export requirements for spent lead-acid battery management standards in LAC 33:V.4145, or subject to the universal waste management standards of LAC 33:V.Chapter 38, to or from the OECD member countries listed in LAC 33:V.1113.I.1.a for recovery shall comply with Subchapter B of this Chapter.

C. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:660 (April 1998), LR 24:1106 (June 1998), LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:822 (May 2006), LR 38:782 (March 2012).

§1113. Exports of Hazardous Waste

A. Applicability. Any person who exports hazardous waste to a foreign country, from a point of departure in the state of Louisiana, shall comply with the requirements of this Chapter and with the special requirements of this Section. This Section establishes requirements applicable to exports of hazardous waste. A primary exporter of hazardous waste shall comply with the special requirements of this Section, and a transporter who transports hazardous waste for export shall comply with applicable requirements of LAC 33:V.Chapter 13.

B. ...

C. General Requirements. Exports of hazardous wastes are prohibited except in compliance with the applicable requirements of this Section and LAC 33:V.Chapter 13. Exports of hazardous waste are prohibited unless:

1. notification in accordance with Subsection D of this Section has been provided;

C.2. - D.1.b.viii. ...

2. Notification shall be sent to the Office of Environmental Services, with "Attention: Notification to Export" prominently displayed on the front of the envelope.

NOTE: This does not relieve the regulated community from the requirement of submitting notification to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, as required by 40 CFR 262.53(b) and Paragraph D.1 of this Section.

3. - 4. ...

5. The administrative authority shall provide a complete notification to the receiving country and any transit countries. A notification is complete when the administrative authority receives a notification which the administrative authority determines satisfies the requirements of Paragraph D.1 of this Section. Where a claim of confidentiality is asserted with respect to any notification information required by Paragraph D.1 of this Section, the administrative authority may find the notification not complete until any such claim is resolved in accordance with LAC 33:I.Chapter 5.

6. Where the receiving country consents to the receipt of the hazardous waste, the administrative authority shall forward an EPA Acknowledgement of Consent to the primary exporter for purposes of Paragraph E.8 of this Section. Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, the administrative authority shall notify the primary exporter in writing. The EPA will also notify the primary exporter of any responses from transit countries.

E. - E.6. ...

7. In lieu of the requirements of LAC 33:V.1107.A.3, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter shall:

a. renotify the United States Environmental Protection Agency of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with Paragraph D.3 of this Section and obtain an EPA Acknowledgment of Consent prior to delivery; or

7.b. - 9. ...

F. Exception Reports. In lieu of the requirements of LAC 33:V.1111.C, a primary exporter must file an exception report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460, if any of the following occurs:

F.1. - H.2. ...

I. International Agreements

1. Any person who exports or imports waste considered hazardous under U.S. national procedures, (i.e., meets the definition of *hazardous waste* in LAC 33:V.109, and is subject to either the manifest requirements of this Chapter, the universal waste management standards of LAC 33:V.Chapter 38, or the requirements for spent lead-acid batteries in LAC 33:V.4145) to or from designated member countries of the OECD, as defined in Subparagraph I.1.a, of this Section for purposes of recovery is subject to Subchapter B of this Section. The requirements of this Section and LAC 33:V.1123 do not apply to such exports and imports.

a. For the purposes of this Subchapter, the designated OECD member countries consist of Australia, Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Republic of Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

b. For the purposes of this Subchapter, Canada and Mexico are considered OECD member countries only for the purpose of transit.

2. Any person who exports hazardous waste to or imports hazardous waste from a designated OECD member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of this Section and LAC 33:V.1123; however, they are not subject to the requirements of LAC 33:V.1127.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 33:2102 (October 2007), LR 34:72 (January 2008), LR 34:622 (April 2008), LR 38:782 (March 2012).

Subchapter B. Transboundary Shipments of Hazardous Waste

§1127. Transboundary Shipments of Hazardous Waste for Recovery within the OECD

A. Applicability

1. The requirements of this Subchapter apply to imports and exports of wastes that are considered hazardous under United States national procedures and are destined for recovery operations in the countries listed in LAC 33:V.1113.I.1.a. A waste is considered hazardous under United States national procedures if the waste:

a. meets the definition of *hazardous waste* as defined in 40 CFR 261.3; and

b. is subject to either the manifesting requirements of LAC 33:V.1107, the universal waste management standards of LAC 33:V.Chapter 38, or the export requirements in the spent lead-acid battery management standards of LAC 33:V.4145.

2. Any person (exporter, importer, or recovery facility operator) who mixes two or more wastes (including hazardous and nonhazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any exporter duties, if applicable, under this Subchapter.

B. General Conditions

1. Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to either a list of wastes subject to the green control procedures or a list of wastes subject to the amber control procedures and by United States national procedures as defined in Paragraph A.1 of this Section. The OECD green and amber lists are incorporated by reference in Paragraph I.4 of this Section.

a. Listed Waste Subject to the Green Control Procedures

i. Green wastes that are not considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section are subject to existing controls normally applied to commercial transactions.

ii. Green wastes that are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section are subject to the amber control procedures set forth in this Subchapter.

iii. Green wastes that are sufficiently contaminated or mixed with other wastes subject to amber list controls such that the waste or waste mixture is considered hazardous under United States national procedures must be handled in accordance with the amber list controls.

b. Listed Wastes Subject to the Amber Control Procedures

i. Amber wastes that are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, are subject to the amber control procedures set forth in this Subchapter.

ii. Amber wastes that are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, are subject to the amber control procedures in the United States, even if it is imported to, or exported from, a designated OECD member country listed in LAC 33:V.1113.I.1.a that does not consider the

waste to be hazardous. In such an event, the responsibilities of the amber control procedures are as follows:

(a). U.S. Exports. The United States shall issue an acknowledgement of receipt and assume other responsibilities of the competent authority of the country of import.

(b). U.S. Imports. The U.S. recovery facility/importer and the United States shall assume the obligations associated with the amber control procedures that normally apply to the exporter and country of export, respectively.

iii. Amber wastes that are not considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section but are considered hazardous by an OECD member country are subject to the amber control procedures in the OECD member country that considers the waste hazardous. All responsibilities of the U.S. importer/exporter shift to the importer/exporter of the OECD member country that considers the waste hazardous unless the parties make other arrangements through contracts.

NOTE: Some wastes subject to the amber control procedures are not listed or otherwise identified as hazardous under RCRA. Therefore, they are not subject to the amber control procedures of this Subchapter. Regardless of the status of the waste under RCRA, however, other federal environmental statutes (e.g., the Toxic Substances Control Act) restrict certain waste imports or exports. Such restrictions continue to apply with regard to this Subchapter.

c. Procedures for Mixtures of Wastes

i. A green waste that is mixed with one or more other green wastes such that the resulting mixture is not considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, shall be subject to the green control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

NOTE: The regulated community should note that some OECD member countries may require, by domestic law, that mixtures of different green wastes be subject to the amber control procedures.

ii. A green waste that is mixed with one or more amber wastes, in any amount, *de minimis* or otherwise, or a mixture of two or more amber wastes, such that the resulting waste mixture is considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, are subject to the amber control procedures, provided the composition of this mixture does not impair its environmentally sound recovery.

NOTE: The regulated community should note that some OECD member countries may require, by domestic law, that a mixture of a green waste and more than a *de minimis* amount of an amber waste or a mixture of two or more amber wastes be subject to the amber control procedures.

d. Wastes not yet assigned to an OECD waste list are eligible for transboundary movements, as follows:

i. if such wastes are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, these wastes are subject to the amber control procedures; or

ii. if such wastes are not considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, such wastes are subject to the green control procedures.

2. General Conditions Applicable to Transboundary Movements of Hazardous Waste

a. The waste shall be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country.

b. The transboundary movement shall be in compliance with applicable international transport agreements.

NOTE: These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

2.c. - 3. ...

a. Re-export of wastes subject to the amber control procedures from the United States, as the importing country, to a third country listed in LAC 33:V.1113.I.1.a may occur only after an exporter in the United States provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification shall comply with the notice and consent procedures in Subsection C of this Section for all concerned countries, and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.

i. ...

ii. The transboundary movement may commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

b. Re-export of wastes subject to the amber control procedures from the original importing country to a third country listed in LAC 33:V.1113.I.1.a may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by an exporter in the original importing country in accordance with Subsection C of this Section. The transboundary movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

c. In the case of re-export of amber wastes to a country other than those listed in LAC 33:V.1113.I.1.a, notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in Subparagraphs B.3.a and b of this Section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

4. Duty to Return or Re-Export Wastes Subject to the Amber Control Procedures. When a transboundary movement of wastes subject to the amber control procedures cannot be completed in accordance with the terms of the contract or the consent(s) and alternative arrangements cannot be made to recover the waste in an environmentally sound manner in the country of import, the waste shall be returned to the country of export or re-exported to a third country. The requirements of Paragraph B.3 of this Section apply to any shipments to be re-exported to a third country.

The following provisions apply to shipments to be returned to the country of export as appropriate.

a. Return from the United States to the Country of Export. The U.S. importer shall inform EPA at the specified address in Clause C.2.a.i of this Section of the need to return the shipment. EPA will then inform the competent authorities of the countries of export and transit, citing the reason(s) for returning the waste. The U.S. importer shall complete the return within 90 days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another timeframe agreed to by the concerned member countries. If the return shipment will cross any transit country, the return shipment may only occur after EPA provides notification to and obtains consent from the competent authority of the country of transit, and provides a copy of that consent to the U.S. importer.

b. Return From the Country of Import to the United States. The U.S. exporter shall provide for the return of the hazardous waste shipment within 90 days from the time the country of import informs EPA of the need to return the waste or such other period of time as the concerned member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Paragraph G.2 of this Section.

5. Duty to Return Wastes Subject to the Amber Control Procedures from the Country of Transit. When a transboundary movement of wastes subject to the amber control Procedures does not comply with the requirements of the notification and movement documents or otherwise constitutes illegal shipment, and if alternative arrangements cannot be made to recover these wastes in an environmentally sound manner, the waste shall be returned to the country of export. The following provisions apply as appropriate:

a. Return from the United States (as Country of Transit) to the Country of Export. The U.S. transporter shall inform EPA at the specified address in Clause C.2.a.i of this Section of the need to return the shipment. EPA will then inform the competent authority of the country of export, citing the reason(s) for returning the waste. The U.S. transporter shall complete the return within 90 days from the time EPA informs the country of export of the need to return the waste, unless informed in writing by EPA of another time frame agreed to by the concerned member countries.

b. Return from the Country of Transit to the United States (as Country of Export). The U.S. exporter shall provide for the return of the hazardous waste shipment within 90 days from the time the competent authority of the country of transit informs EPA of the need to return the waste or such other period of time as the concerned member countries agree. The U.S. exporter shall submit an exception report to EPA in accordance with Paragraph G.2 of this Section.

6. Requirements for Wastes Destined for and Received by R12 and R13 Facilities. The transboundary movement of wastes destined for R12 and R13 operations shall comply with all amber control procedures for notification and consent as set forth in Subsection C of this Section and for the movement document as set forth in Subsection D of this Section. Additional responsibilities of R12/R13 facilities include:

a. indicating in the notification document the foreseen recovery facility or facilities where the subsequent R1-R11 recovery operation takes place or may take place;

b. within three days of receipt of the wastes by the R12/R13 recovery facility or facilities, the facility(ies) shall return a signed copy of the movement document to the exporter and to the competent authorities of the countries of export and import. The facility(ies) shall retain the original of the movement document for three years;

c. as soon as possible, but no later than 30 days after the completion of the R12/R13 recovery operation and no later than one calendar year following the receipt of the waste, the R12 or R13 facility(ies) shall send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N. W. Washington, D.C. 20460, by mail, e-mail without digital signature followed by mail, or fax followed by mail;

d. when a R12/R13 recovery facility delivers wastes for recovery to a R1-R11 recovery facility located in the country of import, it shall obtain as soon as possible, but not later than one calendar year following delivery of the waste, a certification from the R1-R11 facility that recovery of the wastes at that facility has been completed. The R12/R13 facility shall promptly transmit the applicable certification to the competent authorities of the countries of import and export, identifying the transboundary movements to which the certification pertain;

e. when a R12/R13 recovery facility delivers wastes for recovery to an R1-R11 recovery facility located in the initial country of export, amber control procedures apply, including a new notification. If located in a third country other than the initial country of export, amber control procedures apply, with the additional provision that the competent authority of the initial country of export shall also be notified of the transboundary movement.

7. Laboratory Analysis Exemption. The transboundary movement of an amber waste is exempt from the amber control procedures if it is in certain quantities and destined for laboratory analysis to assess its physical or chemical characteristics, or to determine its suitability for recovery operations. The quantity of such waste shall be determined by the minimum quantity reasonably needed to perform the analysis in each particular case adequately, but in no case exceed 25 kgs. Waste destined for laboratory analysis must still be appropriately packaged and labeled.

C. Notification and Consent

1. Applicability. Consent shall be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this Subchapter. Hazardous wastes subject to amber control procedures are subject to the requirements of Paragraph C.2 of this Section and wastes not identified on any list are subject to the requirements of Paragraph C.3 of this Section.

2. Amber Wastes. The export from the United States of hazardous waste as described in Paragraph A.1 of this Section subject to the amber control procedures are

prohibited unless the notification and consent requirements of this Subsection are met.

a. ...

i. Notification. At least 45 days prior to the commencement of each transboundary movement, the exporter must provide written notification, in English, of the proposed transboundary movement to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification shall include all of the information identified in Paragraph C.4 of this Section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same exporter, the exporter may submit one general notification of intent to export these wastes in multiple shipments during a period of up to one year. When a general notification is used for multiple shipments, each shipment shall be accompanied by a movement document pursuant to Subsection D of this Section.

ii. Tacit Consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to Clause C.2.a.i of this Section within 30 days after the date of issuance of the acknowledgment of receipt of notification by the competent authority of the importing country, the transboundary movement may commence. Tacit consent expires one calendar year after the close of the 30-day period; renotification and renewal of all consents are required for exports after that date.

iii. Written Consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transboundary movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise specified; renotification and renewal of each expired consent is required for exports after that date.

b. Transboundary Movements to Facilities Preapproved by the Competent Authorities of the Importing Countries to Accept Specific Wastes for Recovery

i. Notification. The exporter shall provide EPA the information identified in Paragraph C.4 of this Section, in English, at least 10 days in advance of commencing shipment to a preapproved facility. The notification shall indicate that the recovery facility is preapproved, and the notification may apply to a single specific shipment or to multiple shipments as described in Clause C.2.a.i of this Section. This information shall be sent to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, with the words "OECD Export Notification-Preapproved Facility" prominently displayed on the envelope. General notifications that cover multiple shipments as described in Clause C.2.a.i of this Section may cover a period of up to three years.

When a general notification is used for multiple shipments, each shipment shall be accompanied by a movement document pursuant to Subsection D of this Section.

ii. Exports to preapproved facilities may take place after seven working days from the issuance of an acknowledgement of receipt of the notification by the competent authority of the country of import, unless the exporter has received information indicating that the competent authority of any countries concerned objects to the shipment.

3. Wastes not Covered in the OECD Green and Amber Lists. Wastes destined for recovery operations that have not been assigned to the OECD green and amber lists, incorporated by reference in Paragraph I.4 of this Section but which are considered hazardous under United States national procedures as defined in Paragraph A.1 of this Section, shall be subject to the notification and consent requirements established for the amber control procedures in accordance with Paragraph C.2 of this Section. Wastes destined for recovery operations, that have not been assigned to the OECD green and amber lists incorporated by reference in Paragraph I.4 of this Section, and are not considered hazardous under U.S. national procedures as defined by Paragraph A.1 of this Section shall be subject to the green control procedures.

4. Notification Information. Notifications submitted under this Section shall include:

a. serial number or other accepted identifier of the notification document;

b. exporter name and EPA identification number (if applicable), address, telephone number, fax number, and email address;

c. importing recovery facility name, address, telephone number, fax number, email address, and technologies employed;

d. importer name (if not the owner or operator of the recovery facility), address, telephone number, fax number, and email address; whether the importer will engage in waste exchange recovery operation R12 or waste accumulation recovery operation R13 prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;

e. intended transporters and/or their agents; address, telephone number, fax number, and email address;

f. country of export and relevant competent authority and point of departure;

g. countries of transit and relevant competent authorities and points of entry and departure;

h. country of import and relevant competent authority and point of entry;

i. statement of whether the notification is a single notification or a general notification. If general, include the period of validity requested;

j. date foreseen for commencement of transboundary movement;

k. designation of waste type(s) from the appropriate OECD list incorporated by reference in Paragraph I.4 of this Section, descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type;

l. means of transport envisaged;

m. specification of the *recovery operation(s)* as defined in LAC 33:V.109; and

n. certification/declaration signed by the exporter that states:

"I certify that the above information is complete and correct to the best of my knowledge, legally enforceable written contractual obligations have been entered into, and any applicable insurance or other financial guarantees shall cover the transboundary movement."

Name: _____

Signature: _____

Date: _____

NOTE: The United States does not currently require financial assurance for these waste shipments. However, United States exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

5. Certificate of Recovery. As soon as possible, but no later than 30 days after the completion of recovery and no later than one calendar year following receipt of the waste, the U.S. recovery facility shall send a certificate of recovery to the exporter and to the competent authorities of the countries of export and import by mail, email (without a digital signature) or fax followed by mail. The certificate of recovery shall include a signed, written, and dated statement that affirms that the waste materials were recovered in the manner agreed to by the parties to the contract required under Subsection E of this Section.

D. Tracking Document

1. All United States parties subject to the contract provisions of Subsection E of this Section shall ensure that a movement document meeting the conditions of Paragraph D.2 of this Section accompanies each transboundary movement of wastes subject to the amber control procedures from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or sorted by the importer prior to shipment to the final recovery facility, except as provided in Subparagraphs D.1.a and b of this Section.

a. For shipments of hazardous waste within the United States solely by water (bulk shipments only) the generator shall forward the movement document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water (in accordance with the manifest routing procedures in LAC 33:V.1107.D.3).

b. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator shall forward the movement document with the manifest (in accordance with the routing procedures for the manifest in LAC 33:V.1107.D.4) to the next nonrail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

2. The movement document shall include all information required under Subsection C of this Section for notification and the following:

a. date movement commenced;

b. name (if not exporter), address, telephone number, fax number, and email of primary exporter;

c. ...

d. identification (license, registered name, or registration number) of means of transport, including types of packaging envisaged;

e. ...

f. certification/declaration signed by the exporter that no objection to the shipment has been lodged as follows:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transboundary movement, and that:

1. all necessary consents have been received; or

2. the shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; or

3. the shipment is directed to a recovery facility preauthorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries."

[Delete sentences that are not applicable]

Name:

Signature:

Date:

and

g. appropriate signatures for each custody transfer (e.g., transporter, importer, and owner or operator of the recovery facility).

3. Exporters also shall comply with the special manifest requirements of LAC 33:V.1113.E.1, 2, 3, 5, and 9; and importers must comply with the import requirements of LAC 33:V.1123.

4. Each United States person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility shall sign the movement document (e.g., transporter, importer, and owner or operator of the recovery facility).

5. Within three working days of the receipt of imports subject to this Subchapter, the owner or operator of the United States recovery facility shall send signed copies of the movement document to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, and to the competent authorities of the exporting and transit countries. If the concerned U.S. recovery facility is a R12 and R13 *recovery facility* as defined under LAC 33:V.109. *Recovery Operations*, Table 1, the facility shall retain the original of the movement document for three years.

E. Contracts

1. Transboundary movements of hazardous wastes subject to the amber control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the exporter and the owner or operator of the recovery facility and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this Section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

2. - 3. ...

a. the person having actual possession or physical control over the wastes will immediately inform the exporter and the competent authorities of the exporting and importing

countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

b. the person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging the return of waste, and shall provide the notification for re-export.

4. Contracts must specify that the importer will provide the notification required in Paragraph B.3 of this Section prior to re-export of controlled wastes to a third country.

5. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements.

NOTE: Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD member countries do. It is the responsibility of the exporter to ascertain and comply with such requirements; in some cases, transporters or importers may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

6. ...

7. Upon request by EPA, United States exporters, importers, or recovery facilities shall submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

NOTE: Although the United States does not require routine submission of contracts at this time, OECD Decision C(92)39/FINAL allows member countries to impose such requirements. When other OECD member countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD member countries may deny consent for the proposed movement.

F. - F.1. ...

2. A recognized trader acting as an exporter or importer for transboundary shipments of waste must comply with all the requirements of this Subchapter associated with being an exporter or importer.

G. Reporting and Recordkeeping

1. Annual Reports. For all waste movements subject to this Subchapter, persons (e.g., exporters, recognized traders) who meet the definition of *primary exporter* in LAC 33:V.109 or who initiate the movement document under Subsection D of this Section shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460, no later than March 1 of each year, summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter or the person who initiates the movement document under Subsection D of this Section is

required to file an annual report for waste exports that are not covered under this Subchapter, he may include all export information in one report, provided the information required in Subparagraph 1.a of this Subsection on exports of waste destined for recovery within the designated OECD member countries is contained in a separate section.) Such reports shall include the following:

a. the EPA identification number, name, and mailing and site address of the exporter filing the report;

b. - c. ...

d. by final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from LAC 33:V.Chapter 49), designation of waste type(s) from OECD waste lists and applicable waste code from the OECD lists incorporated by reference in Paragraph I.4 of this Section, the DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this Subchapter, and the number of shipments pursuant to each notification;

e. - e.ii. ...

f. a certification signed by the person acting as primary exporter or initiator of the movement document under Subsection D of this Section that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this 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."

2. Exception Reports. Any person who meets the definition of *primary exporter* in LAC 33:V.109 or who initiates the movement document under Subsection D of this Section must file an exception report, in lieu of the requirements of LAC 33:V.1111.C (if applicable), with the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20560, if any of the following occurs:

a. he has not received a copy of the RCRA hazardous waste manifest (if applicable) signed by the transporter identifying the point of departure of the waste from the United States within 45 days from the date it was accepted by the initial transporter;

b. within 90 days from the date the waste was accepted by the initial transporter, the exporter has not received written confirmation from the recovery facility that the hazardous waste was received; or

2.c. - 3. ...

a. Persons who meet the definition of *primary exporter* in LAC 33:V.109 or who initiate the movement document under this Section shall keep the following records:

i. - ii. ...

iii. a copy of any exception reports and a copy of each confirmation of delivery (i.e., movement documentation) sent by the recovery facility to the exporter for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.

iv. a copy of each certificate of recovery sent by the recovery facility to the exporter for at least three years from the date that the recovery facility completed processing the waste shipment.

b. The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrative authority.

H. - I.1.a. ...

b. is subject to either the Federal RCRA manifesting requirements of this Chapter, the universal waste management standards of LAC 33:V.Chapter 38, or the export requirements in the spent lead-acid battery management standards of LAC 33:V.4145.

2. If a waste is hazardous under Paragraph I.1 of this Section, it is subject to the amber control procedures, regardless of whether it appears in Appendix 4 of the OECD Decision, as defined in Subsection B of this Section.

3. The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Subsection B of this Section.

4. The OECD waste lists, as set forth in Annex B ("Green List") and Annex C ("Amber List") (collectively "OECD waste lists") of the 2009 "Guidance Manual for the Implementation of Council Decision C (2001)107/FINAL, as Amended, on the Control of Transboundary Movements of Wastes Destined for Recovery Operations," are incorporated by reference. This incorporation by reference was approved by the director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the *Federal Register*. The materials are available for inspection at: the U.S. Environmental Protection Agency, Docket Center Public Reading Room, EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004 (Docket # EPA-HQ-RCRA-2005-0018) or at the National Archives and Records Administration (NARA), and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue André Pascal, F-75775 Paris Cedex 16, France. For information on the availability of this material at NARA, call (202) 741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>. To contact the EPA Docket Center Public Reading Room, call (202) 566-1744. To contact the OECD, call +33 (0) 1 45 24 81 67.

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 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:293 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2103 (October 2007), LR 34:72 (January 2008), LR 34:1012 (June 2008), LR 38:783 (March 2012).

Chapter 13. Transporters

§1301. Applicability

A. - E. ...

F. A transporter of hazardous waste subject to the federal manifesting requirements of LAC 33:V.Chapter 11 or subject to the waste management standards of LAC 33:V.Chapter 38

that is being imported from or exported to any of the countries listed in LAC 33:V.1113.I.1.a for purposes of recovery is subject to this Chapter and to all other relevant requirements of LAC 33:V.Chapter 11.Subchapter B including, but not limited to, LAC 33:V.1127.D for movement documents.

G. - H. ...

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 by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), LR 24:1694 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 38:789 (March 2012).

Chapter 15. Treatment, Storage, and Disposal Facilities

§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities

A. - B.3. ...

4. Within three working days of the receipt of a shipment subject to LAC 33:V.Chapter 11.Subchapter B, the owner or operator of the facility shall provide a copy of the movement document bearing all required signatures to the exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460, and to competent authorities of all other concerned countries. The original copy of the movement document shall be maintained at the facility for at least three years from the date of signature.

5. If a facility receives hazardous waste imported from a foreign source, the receiving facility shall mail a copy of the manifest and documentation confirming EPA's consent to the import of hazardous waste to the following address within 30 days of delivery: Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-0001. In addition, the facility must, within 30 days:

B.5.a. - D.7.COMMENT. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006), amended LR 33:2104 (October 2007), LR 34:623 (April 2008), LR 34:1012 (June 2008), LR 38:789 (March 2012).

§1531. Required Notices

A. ...

B. The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to LAC 33:V.Chapter 11.Subchapter B shall provide a copy of the movement document bearing all required signatures to the foreign exporter, to the Office of Enforcement and Compliance Assurance, Office of Federal Activities, International Compliance Assurance Division (2254A), Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460, and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the

signed movement document shall be maintained at the facility for at least three years. In addition, such owner or operator shall, as soon as possible, but no later than 30 days after the completion of recovery and no later than one calendar year following the receipt of the hazardous waste, send a certificate of recovery to the foreign exporter and to the competent authority of the country of export and to EPA's Office of Enforcement and Compliance Assurance at the above address by mail, email (without a digital signature), or fax followed by mail.

C. - E. ...

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 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2473 (November 2000), LR 27:294 (March 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2105 (October 2007), LR 38:789 (March 2012).

Chapter 41. Recyclable Materials

§4145. Spent Lead-Acid Batteries Being Reclaimed

A. ...

If Your Batteries:	And If You:	Then You:	And You:
1. - 5. ...			
6. will be reclaimed through regeneration or any other means;	export these batteries for reclamation in a foreign country;	are exempt from LAC 33:V.Chapters 3, 5, 7, 9, 13, 15, 17,19, 21, 22, 23, 25, 27, 28, 29, 30, 32, 33, 35, 37, and 43, and the notification requirements at section 3010 of RCRA. You are also exempt from LAC 33:V.Chapter 11, except for LAC 33:V.1103, and except for the applicable requirements in either: (a) LAC 33:V.1125; or (b) LAC 33:V.1113.D "Notification of Intent to Export", LAC 33:V.1113.G.1.a-d, f and G.2 "Annual Reports", and LAC 33:V.1113.H "Recordkeeping;"	are subject to LAC 33:V.Chapters 1, 31, 39, 41, and 49 as applicable and LAC 33:V.1103, and either must comply with LAC 33:V.1125.A (if shipping to one of the OECD countries specified in LAC 33:V.1113.I.1.a), or shall: (a) comply with the requirements applicable to a primary exporter in LAC 33:V.1113.D, G.1.a-d, G.2, and H; (b) export these batteries only upon consent of the receiving country and in conformance with the EPA Acknowledgement of Consent as defined in LAC 33:V.1113.A- I.2; and (c) provide a copy of the EPA Acknowledgement of Consent for the shipment to the transporter transporting the shipment for export;
7. will be reclaimed through regeneration or any other means.	transport these batteries in the U. S. to export them for reclamation in a foreign country.	are exempt from LAC 33:V.Chapters 3, 5, 7, 9, 13, 15, 17,19, 21, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, 41, and 43, and the notification requirements at section 3010 of RCRA.	must comply with applicable requirements in LAC 33:V.1125 (if shipping to one of the OECD countries specified in LAC 33:V.1113.I.1.a, or must comply with the following: (a) you may not accept a shipment if you know the shipment does not conform to the EPA Acknowledgement of Consent; (b) you must ensure that a copy of the EPA Acknowledgement of Consent accompanies the shipment; and (c) you must ensure that the shipment is delivered to the facility designated by the person initiating the shipment.

B. - B.2.d. ...

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 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 13:237 (April 1987), LR 23:579 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:287 (February 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:611 (April 2006), LR 32:830 (May 2006), LR 38:790 (March 2012).

Herman Robinson, CPM
Executive Counsel

1203#007

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

**Withdrawal of the Emission Comparable Fuel Exclusion
(LAC 33:V.105 and 4909)(HW109ft)**

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 regulations, LAC 33:V.105 and 4909 (Log #HW109ft).

This Rule is identical to federal regulations found in 40 CFR 261.4(a)(16); 40 CFR 261.38-261.38(c), which are applicable in Louisiana. For more information regarding the

federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This Rule withdraws the conditional exclusion from regulations promulgated on December 19, 2008 under subtitle C of the Resource Conservation and Recovery Act (RCRA) for so-called emission comparable fuel. These are fuels produced from hazardous secondary materials which, when burned in industrial boilers under specified conditions, generate emissions that are comparable to emissions from burning fuel oil in the same boilers. EPA withdrew this conditional exclusion because the agency has concluded the emission comparable fuel is more appropriately classified as a discarded material and regulated as a hazardous waste. The exclusion for comparable fuel and synthesis gas fuel are not addressed or otherwise affected by this Rule. This action is necessary for the state hazardous waste regulations to maintain equivalency with the federal regulations. The basis and rationale for this Rule is to mirror the federal regulations. This Rule meets an exception listed in R.S. 30:2019(D)(2) 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 the denial of a permit for the active life of a hazardous waste management facility or 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. Wastes that are excluded from regulation are found in this Section.

A. - D.1.p.vi. ...

q. comparable fuels or comparable syngas fuels that meet the requirements of LAC 33:V.4909;

D.1.r. - P.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq., and in particular, 2186(A)(2).

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, LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362, 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, 831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997),

amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564, 567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:655 (April 1998), LR 24:1093 (June 1998), LR 24:1687, 1759 (September 1998), LR 25:431 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:268 (February 2000), LR 26:2464 (November 2000), LR 27:291 (March 2001), LR 27:706 (May 2001), LR 29:317 (March 2003), LR 30:1680 (August 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:605 (April 2006), LR 32:821 (May 2006), LR 33:450 (March 2007), LR 33:2097 (October 2007), LR 34:614 (April 2008), LR 34:1008 (June 2008), LR 34:1893 (September 2008), LR 34:2395 (November 2008), LR 35:1878 (September 2009), LR 36:2553 (November 2010), LR 38:791 (March 2012).

Chapter 49. Lists of Hazardous Wastes

NOTE: Chapter 49 is divided into two sections: Category I Hazardous Wastes, which consist of Hazardous Wastes from nonspecific and specific sources (F and K wastes), Acute Hazardous Wastes (P wastes), and Toxic Wastes (U wastes) (LAC 33:V.4901); and Category II Hazardous Wastes, which consist of wastes that are ignitable, corrosive, reactive, or toxic (LAC 33:V.4903).

§4909. Exclusion of Comparable Fuel and Syngas Fuel

A. Specifications for Excluded Fuels. Wastes that meet the following comparable/syngas fuel requirements are not solid wastes.

B. - C.5. ...

Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Total Nitrogen as N	NA	4900	
Total Halogens as Cl	NA	540	
Total Organic Halogens as Cl	NA	25 or individual halogenated organics listed below	
Polychlorinated biphenyls, total [Aroclors, total]	1336-36-3	Nondetect	1.4
Cyanide, total	57-12-5	Nondetect	1.0
Metals			
Antimony, total	7440-36-0	12	
Arsenic, total	7440-38-2	0.23	
Barium, total	7440-39-3	23	
Beryllium, total	7440-41-7	1.2	
Cadmium, total	7440-43-9	1.2	
Chromium, total	7440-47-3	2.3	
Cobalt	7440-48-4	4.6	
Lead, total	7439-92-1	31	
Manganese	7439-96-5	1.2	
Mercury, total	7439-97-6	0.25	
Nickel, total	7440-02-0	58	
Selenium, total	7782-49-2	0.23	
Silver, total	7440-22-4	2.3	
Thallium, total	7440-28-0	23	
Hydrocarbons			
Benzo[a]anthracene	56-55-3	2400	
Benzene	71-43-2	4100	
Benzo[b]fluoranthene	205-99-2	2400	
Benzo[k]fluoranthene	207-08-9	2400	
Benzo[a]pyrene	50-32-8	2400	

Table 7: Detection and Detection Limit Values for Comparable Fuel Specification			
Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Chrysene	218-01-9	2400	
Dibenzo[a,h]anthracene	53-70-3	2400	
7,12-Dimethylbenz[a]anthracene	57-97-6	2400	
Fluoranthene	206-44-0	2400	
Indeno(1,2,3-cd)pyrene	193-39-5	2400	
3-Methylcholanthrene	56-49-5	2400	
Naphthalene	91-20-3	3200	
Toluene	108-88-3	36000	
Oxygenates			
Acetophenone	98-86-2	2400	
Acrolein	107-02-8	39	
Allyl alcohol	107-18-6	30	
Bis(2-ethylhexyl)phthalate [Di-2-ethylhexyl phthalate]	117-81-7	2400	
Butyl benzyl phthalate	85-68-7	2400	
o-Cresol [2-Methyl phenol]	95-48-7	2400	
m-Cresol [3-Methyl phenol]	108-39-4	2400	
p-Cresol [4-Methyl phenol]	106-44-5	2400	
Di-n-butyl phthalate	84-74-2	2400	
Diethyl phthalate	84-66-2	2400	
2,4-Dimethylphenol	105-67-9	2400	
Dimethyl phthalate	131-11-3	2400	
Di-n-octyl phthalate	117-84-0	2400	
Endothall	145-73-3	100	
Ethyl methacrylate	97-63-2	39	
2-Ethoxyethanol [Ethylene glycol monoethyl ether]	110-80-5	100	
Isobutyl alcohol	78-83-1	39	
Isosafrole	120-58-1	2400	
Methyl ethyl ketone [2-Butanone]	78-93-3	39	
Methyl methacrylate	80-62-6	39	
1,4-Naphthoquinone	130-15-4	2400	
Phenol	108-95-2	2400	
Propargyl alcohol [2-Propyn-1-ol]	107-19-7	30	
Safrole	94-59-7	2400	
Sulfonated Organics			
Carbon disulfide	75-15-0	Nondetect	39
Disulfoton	298-04-4	Nondetect	2400
Ethyl methanesulfonate	62-50-0	Nondetect	2400
Methyl methanesulfonate	66-27-3	Nondetect	2400
Phorate	298-02-2	Nondetect	2400
1,3-Propane sultone	1120-71-4	Nondetect	100
Tetraethylthiopyrophosphate [Sulfotep]	3689-24-5	Nondetect	2400
Thiophenol [Benzenethiol]	108-98-5	Nondetect	30
O,O,O-Triethyl phosphorothioate	126-68-1	Nondetect	2400
Nitrogenated Organics			
Acetonitrile [Methyl cyanide]	75-05-8	Nondetect	39
2-Acetylaminofluorene [2-AAF]	53-96-3	Nondetect	2400
Acrylonitrile	107-13-1	Nondetect	39
4-Aminobiphenyl	92-67-1	Nondetect	2400
4-Aminopyridine	504-24-5	Nondetect	100
Aniline	62-53-3	Nondetect	2400
Benzidine	92-87-5	Nondetect	2400
Dibenz[a,j]acridine	224-42-0	Nondetect	2400
O,O-Diethyl O-pyrazinyl phosphoro-thioate [Thionazin]	297-97-2	Nondetect	2400
Dimethoate	60-51-5	Nondetect	2400
p-(Dimethylamino)azobenzene [4-Dimethylaminoazobenzene]	60-11-7	Nondetect	2400
3,3'-Dimethylbenzidine	119-93-7	Nondetect	2400
α,α-Dimethylphenethylamine	122-09-8	Nondetect	2400
3,3'-Dimethoxybenzidine	119-90-4	Nondetect	100

Table 7: Detection and Detection Limit Values for Comparable Fuel Specification			
Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
1,3-Dinitrobenzene [m-Dinitrobenzene]	99-65-0	Nondetect	2400
4,6-Dinitro-o-cresol	534-52-1	Nondetect	2400
2,4-Dinitrophenol	51-28-5	Nondetect	2400
2,4-Dinitrotoluene	121-14-2	Nondetect	2400
2,6-Dinitrotoluene	606-20-2	Nondetect	2400
Dinoseb [2-sec-Butyl-4,6-dinitrophenol]	88-85-7	Nondetect	2400
Diphenylamine	122-39-4	Nondetect	2400
Ethyl carbamate [Urethane]	51-79-6	Nondetect	100
Ethylenethiourea (2-Imidazolidinethione)	96-45-7	Nondetect	110
Famphur	52-85-7	Nondetect	2400
Methacrylonitrile	126-98-7	Nondetect	39
Methapyrilene	91-80-5	Nondetect	2400
Methomyl	16752-77-5	Nondetect	57
2-Methylactonitrile [Acetone cyanohydrin]	75-86-5	Nondetect	100
Methyl parathion	298-00-0	Nondetect	2400
MNNG (N-Metyl-N-nitroso-N'-nitroguanidine)	70-25-7	Nondetect	110
1-Naphthylamine, [α-Naphthylamine]	134-32-7	Nondetect	2400
2-Naphthylamine, [β-Naphthylamine]	91-59-8	Nondetect	2400
Nicotine	54-11-5	Nondetect	100
4-Nitroaniline, [p-Nitroaniline]	100-01-6	Nondetect	2400
Nitrobenzene	98-95-3	Nondetect	2400
p-Nitrophenol, [p-Nitrophenol]	100-02-7	Nondetect	2400
5-Nitro-o-toluidine	99-55-8	Nondetect	2400
N-Nitrosodi-n-butylamine	924-16-3	Nondetect	2400
N-Nitrosodiethylamine	55-18-5	Nondetect	2400
N-Nitrosodiphenylamine, [Diphenylnitrosamine]	86-30-6	Nondetect	2400
N-Nitroso-N-methylethylamine	10595-95-6	Nondetect	2400
N-Nitrosomorpholine	59-89-2	Nondetect	2400
N-Nitrosopiperidine	100-75-4	Nondetect	2400
N-Nitrosopyrrolidine	930-55-2	Nondetect	2400
2-Nitropropane	79-46-9	Nondetect	2400
Parathion	56-38-2	Nondetect	2400
Phenacetin	62-44-2	Nondetect	2400
1,4-Phenylenediamine, [p-Phenylenediamine]	106-50-3	Nondetect	2400
N-Phenylthiourea	103-85-5	Nondetect	57
2-Picoline [alpha-Picoline]	109-06-8	Nondetect	2400
Propylthioracil [6-Propyl-2-thiouracil]	51-52-5	Nondetect	100
Pyridine	110-86-1	Nondetect	2400
Strychnine	57-24-9	Nondetect	100
Thioacetamide	62-55-5	Nondetect	57
Thiofanox	39196-18-4	Nondetect	100
Thiourea	62-56-6	Nondetect	57
Toluene-2,4-diamine [2,4-Diaminotoluene]	95-80-7	Nondetect	57
Toluene-2,6-diamine [2,6-Diaminotoluene]	823-40-5	Nondetect	57
o-Toluidine	95-53-4	Nondetect	2400
p-Toluidine	106-49-0	Nondetect	100
1,3,5-Trinitrobenzene, [sym-Trinitrobenzene]	99-35-4	Nondetect	2400
Halogenated Organics			
Allyl chloride	107-05-1	Nondetect	39
Aramite	140-57-8	Nondetect	2400

Table 7: Detection and Detection Limit Values for Comparable Fuel Specification			
Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Benzal chloride [Dichloromethyl benzene]	98-87-3	Nondetect	100
Benzyl chloride	100-44-77	Nondetect	100
Bis(2-chloroethyl)ether [Dichloroethyl ether]	111-44-4	Nondetect	2400
Bromoform [Tribromomethane]	75-25-2	Nondetect	39
Bromomethane [Methyl bromide]	74-83-9	Nondetect	39
4-Bromophenyl phenyl ether [p-Bromo diphenyl ether]	101-55-3	Nondetect	2400
Carbon tetrachloride	56-23-5	Nondetect	39
Chlordane	57-74-9	Nondetect	14
p-Chloroaniline	106-47-8	Nondetect	2400
Chlorobenzene	108-90-7	Nondetect	39
Chlorobenzilate	510-15-6	Nondetect	2400
p-Chloro-m-cresol	59-50-7	Nondetect	2400
2-Chloroethyl vinyl ether	110-75-8	Nondetect	39
Chloroform	67-66-3	Nondetect	39
Chloromethane [Methyl chloride]	74-87-3	Nondetect	39
2-Chloronaphthalene [beta-Chloronaphthalene]	91-58-7	Nondetect	2400
2-Chlorophenol [o-Chlorophenol]	95-57-8	Nondetect	2400
Chloroprene [2-Chloro-1,3-butadiene]	1126-99-8	Nondetect	39
2,4-D [2,4-Dichlorophenoxyacetic acid]	94-75-7	Nondetect	7.0
Diallate	2303-16-4	Nondetect	3400
1,2-Dibromo-3-chloropropane	96-12-8	Nondetect	39
1,2-Dichlorobenzene [o-Dichlorobenzene]	95-50-1	Nondetect	2400
1,3-Dichlorobenzene [m-Dichlorobenzene]	541-73-1	Nondetect	2400
1,4-Dichlorobenzene [p-Dichlorobenzene]	106-46-7	Nondetect	2400
3,3'-Dichlorobenzidine	91-94-1	Nondetect	2400
Dichlorodifluoromethane [CFC-12]	75-71-8	Nondetect	39
1,2-Dichloroethane [Ethylene dichloride]	107-06-2	Nondetect	39
1,1-Dichloroethylene [Vinylidene chloride]	75-35-4	Nondetect	39
Dichloromethoxy ethane [Bis(2-chloroethoxy)methane]	111-91-1	Nondetect	2400
2,4-Dichlorophenol	120-83-2	Nondetect	2400
2,6-Dichlorophenol	87-65-0	Nondetect	2400
1,2-Dichloropropane [Propylene dichloride]	78-87-5	Nondetect	39
cis-1,3-Dichloropropylene	10061-01-5	Nondetect	39
trans-1,3-Dichloropropylene	10061-02-6	Nondetect	39
1,3-Dichloro-2-propanol	96-23-1	Nondetect	30
Endosulfan I	959-98-8	Nondetect	1.4
Endosulfan II	33213-65-9	Nondetect	1.4
Endrin	72-20-8	Nondetect	1.4
Endrin aldehyde	7421-93-4	Nondetect	1.4
Endrin Ketone	53494-70-5	Nondetect	1.4
Epichlorohydrin [1-Chloro-2,3-epoxy propane]	106-89-8	Nondetect	30
Ethylidene dichloride [1,1-Dichloroethane]	75-34-3	Nondetect	39
2-Fluoroacetamide	640-19-7	Nondetect	100
Heptachlor	76-44-8	Nondetect	1.4
Heptachlor epoxide	1024-57-3	Nondetect	2.8
Hexachlorobenzene	118-74-1	Nondetect	2400

Table 7: Detection and Detection Limit Values for Comparable Fuel Specification			
Chemical Name	CAS Number	Concentration Limit (mg/kg at 10,000 Btu/lb)	Minimum Required Detection Limit (mg/kg)
Hexachloro-1,3-butadiene [Hexachlorobutadiene]	87-68-3	Nondetect	2400
Hexachlorocyclopentadiene	77-47-4	Nondetect	2400
Hexachloroethane	67-72-1	Nondetect	2400
Hexachlorophene	70-30-4	Nondetect	59000
Hexachloropropene [Hexachloropropylene]	1888-71-7	Nondetect	2400
Isodrin	465-73-6	Nondetect	2400
Kepona [Chlordecone]	143-50-0	Nondetect	4700
Lindane [gamma-Hexachlorocyclohexane] [gamma-BHC]	58-89-9	Nondetect	1.4
Methylene chloride [Dichloromethane]	75-09-2	Nondetect	39
4,4'-methylene-bis(2-chloroaniline)	101-14-4	Nondetect	100
Methyl iodide [Iodomethane]	74-88-4	Nondetect	39
Pentachlorobenzene	608-93-5	Nondetect	2400
Pentachloroethane	76-01-7	Nondetect	39
Pentachloronitrobenzene [PCNB] [Quintobenzene] [Quintozene]	82-68-8	Nondetect	2400
Pentachlorophenol	87-86-5	Nondetect	2400
Pronamide	23950-58-5	Nondetect	2400
Silvex [2,4,5-Trichlorophenoxypropionic acid]	93-72-1	Nondetect	7.0
2,3,7,8-Tetrachlorodibenzo-p-dioxin [2,3,7,8-TCDD]	1746-01-6	Nondetect	30
1,2,4,5-Tetrachlorobenzene	95-94-3	Nondetect	2400
1,1,2,2-Tetrachloroethane	79-34-5	Nondetect	39
Tetrachloroethylene [Perchloroethylene]	127-18-4	Nondetect	39
2,3,4,6-Tetrachlorophenol	58-90-2	Nondetect	2400
1,2,4-Trichlorobenzene	120-82-1	Nondetect	2400
1,1,1-Trichloroethane [Methyl chloroform]	71-55-6	Nondetect	39
1,1,2-Trichloroethane [Vinyl trichloride]	79-00-5	Nondetect	39
Trichloroethylene	79-01-6	Nondetect	39
Trichlorofluoromethane [Trichloromonofluoromethane]	75-69-4	Nondetect	39
2,4,5-Trichlorophenol	95-95-4	Nondetect	2400
2,4,6-Trichlorophenol	88-06-02	Nondetect	2400
1,2,3-Trichloropropane	96-18-4	Nondetect	39
Vinyl Chloride	75-01-4	Nondetect	39

NOTES:
NA—Not Applicable

D. Implementation. Wastes that meet the comparable or syngas fuel specifications provided by Subsection B or C of this Section are excluded from the definition of solid waste provided that the conditions under this Section are met. For purposes of this Section, such materials are called excluded fuel; the person claiming and qualifying for the exclusion is called the excluded fuel generator; and the person burning the excluded fuel is called the excluded fuel burner. The person who generates the excluded fuel must claim the exclusion by complying with the conditions of this Section and keeping records necessary to document compliance with those conditions.

1. Notices

a. Notices to State RCRA and CAA Authorized States or Regional RCRA and CAA Administrative Authority in Unauthorized States

i. The generator must submit a one-time notice, except as provided by Clause D.1.a.v of this Section, to the regional or state RCRA and CAA administrative authority in whose jurisdiction the exclusion is being claimed and where the excluded fuel will be burned, certifying compliance with the conditions of the exclusion and providing the following documentation:

(a). the name, address, and EPA ID number of the person/facility claiming the exclusion;

(b). the applicable EPA hazardous waste codes that would otherwise apply to the excluded fuel;

(c). the name and address of the units meeting the requirements of Paragraph D.2 and Subsection E of this Section that will burn the excluded fuel;

(d). an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed, except as provided by Clause D.1.a.iii of this Section; and

(e). the following statement signed and submitted by the person claiming the exclusion or his authorized representative:

"Under penalty of criminal and civil prosecution for making or submitting false statements, representations, or omissions, I certify that the requirements of LAC 33:V.4909 have been met for all waste identified in this notification. Copies of the records and information required at LAC 33:V.4909.D.10 are available at the generator's facility. Based on my inquiry of the individuals immediately responsible for obtaining the information, the information is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

ii. If there is a substantive change in the information provided in the notice required under Paragraph D.1 of this Section, the generator must submit a revised notification.

iii. Excluded fuel generators must include an estimate of the average and maximum monthly and annual quantity of material for which an exclusion would be claimed only in notices submitted after December 19, 2008, for newly excluded fuel or for revised notices as required by Clause D.1.a.ii of this Section.

b. Public Notice. Prior to burning an excluded fuel, the burner must publish in a major newspaper of general circulation local to the site where the fuel will be burned, a notice entitled "Notification of Burning a Fuel Excluded under the Resource Conservation and Recovery Act" containing the following information:

i. the name, address, and EPA ID number of the generating facility(ies);

ii. the name and address of the burner and the identification of the unit(s) that will burn the excluded fuel;

iii. a brief, general description of the manufacturing, treatment, or other process generating the excluded fuel;

iv. an estimate of the average and maximum monthly and annual quantity of the excluded fuel to be burned; and

v. ...

2. Burning. The exclusion applies only if the fuel is burned in the following units that also shall be subject to

federal/state/local air emission requirements, including all applicable CAA MACT requirements:

a. - d. ...

3. Blending to Meet the Specifications. Hazardous waste shall not be blended to meet the comparable fuel specification under Subsection B of this Section, except as provided by Subparagraph D.3.a of this Section.

a. Blending to Meet the Viscosity Specification. A hazardous waste blended to meet the viscosity specification for comparable fuel shall:

i. as generated and prior to any blending, manipulation, or processing, meet the constituent and heating value specifications of Subparagraph B.1.a and Paragraph B.2 of this Section;

ii. be blended at a facility that is subject to the applicable requirements of LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, 43, and LAC 33:V.1109.E; and

iii. not violate the dilution prohibition of Paragraph D.6 of this Section.

b. Residuals resulting from the treatment of a hazardous waste listed in LAC 33:V.4901 to generate a comparable fuel remain a hazardous waste.

4. - 5.a.i. ...

ii. is performed at a facility that is subject to the applicable requirements of LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, 43, and LAC 33:V.1109.E, or is an exempt recycling unit in accordance with LAC 33:V.4105.C; and

a.iii. - b. ...

6. Dilution Prohibition for Comparable and Syngas Fuels. No generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a hazardous waste to meet the specifications of Subparagraph B.1.a, Paragraph B.2, or Subsection C of this Section.

7. Fuel Analysis Plan for Generators. The generator of an excluded fuel shall develop and follow a written fuel analysis plan that describes the procedures for sampling and analysis of the materials to be excluded. The plan shall be followed and retained at the site of the generator claiming the exclusion.

a. ...

i. the parameters for which each excluded fuel will be analyzed and the rationale for the selection of those parameters;

ii. ...

iii. the sampling method which will be used to obtain a representative sample of the excluded fuel to be analyzed;

iv. the frequency with which the initial analysis of the excluded fuel will be reviewed or repeated to ensure that the analysis is accurate and up to date; and

v. if process knowledge is used in the determination, any information prepared by the generator in making such determination

b. For each analysis, the generator shall document the following:

i. the dates and times samples were obtained, and the dates the samples were analyzed;

ii. - viii. ...

c. Syngas fuel generators shall submit for approval, prior to performing sampling, analysis, or any management of an excluded syngas fuel, a fuel analysis plan containing the elements of Subparagraph D.7.a of this Section to the appropriate regulatory authority. The approval of fuel analysis plans must be stated in writing and received by the facility prior to sampling and analysis to demonstrate the exclusion of a syngas. The approval of the fuel analysis plan may contain such provisions and conditions as the regulatory authority deems appropriate.

8. Excluded Fuel Sampling and Analysis

a. General. For wastes for which an exclusion is claimed under the specifications provided by Subsections B and C of this Section, the generator of the waste must test for all the constituents on LAC 33:V.3105, Table 1, except those that the generator determines, based on testing or knowledge, should not be present in the fuel. The generator is required to document the basis of each determination that a constituent should not be present. The generator may not determine that any of the following categories of constituents with a specification in Table 7 of this Section should not be present:

i. a constituent that triggered the toxicity characteristic for the constituents that were the basis of the listing of the hazardous secondary material as a hazardous waste, or constituents for which there is a treatment standard for the waste code in LAC 33:V.2223;

ii. - iv. ...

NOTE: Any claim under this Section must be valid and accurate for all hazardous constituents; a determination not to test for a hazardous constituent will not shield a generator from liability should that constituent later be found in the excluded fuel above the exclusion specifications.

b. Use of Process Knowledge. For each waste for which the comparable fuel or syngas exclusion is claimed where the generator of the excluded fuel is not the original generator of the hazardous waste, the generator of the excluded fuel may not use process knowledge in accordance with Subparagraph D.8.a of this Section and must test to determine that all of the constituent specifications of Subsections B and C of this Section, as applicable, have been met.

c. The excluded fuel generator may use any reliable analytical method to demonstrate that no constituent of concern is present at concentrations above the specification levels. It is the responsibility of the generator to ensure that the sampling and analysis are unbiased, precise, and representative of the excluded fuel. For the fuel to be eligible for exclusion, a generator must demonstrate that:

i. the 95 percent upper confidence limit of the mean concentration for each constituent of concern is not above the specification level; and

ii. the analysis could have detected the presence of the constituent at or below the specification level.

d. - e. ...

f. The generator must conduct sampling and analysis in accordance with the fuel analysis plan developed under Paragraph D.7 of this Section.

g. Viscosity Condition for Comparable Fuel. Excluded comparable fuel that has not been blended to meet the kinematic viscosity specifications shall be analyzed as generated.

h. If hazardous waste is blended to meet the kinematic viscosity specifications for comparable fuel, the generator shall:

i. analyze the hazardous waste as generated to ensure that it meets the constituent and heating value specifications of Subsection B of this Section; and

ii. ...

i. Excluded fuel must be retested, at a minimum, annually and must be retested after a process change that could change the chemical or physical properties in a manner that may affect conformance with the specifications.

9. Speculative Accumulation. Excluded fuel must not be accumulated speculatively, as defined in LAC 33:V.109.

10. Operating Records. The generator must maintain an operating record on-site containing the following information:

a. - a.i. ...

ii. for each excluded fuel, the EPA hazardous waste codes that would be applicable if the material were discarded; and

iii. ...

b. a brief description of the process that generated the excluded fuel, and if the comparable fuel generator is not the generator of the original hazardous waste, provide a brief description of the process that generated the hazardous waste;

c. the monthly and annual quantities of each fuel claimed to be excluded;

d. documentation for any claim that a constituent is not present in the excluded fuel as required under Subparagraph D.8.a of this Section;

e. the results of all analyses and all detection limits achieved as required under Paragraph D.7 of this Section;

f. if the comparable fuel was generated through treatment or blending, documentation of compliance with the applicable provisions of Paragraphs D.3 and 4 of this Section;

g. if the excluded fuel is to be shipped off-site, a certification from the burner as required under Paragraph D.12 of this Section;

h. the fuel analysis plan and documentation of all sampling and analysis results as required by Paragraph D.7 of this Section that includes the following:

i. - viii. ...

i. if the generator ships excluded fuel off-site for burning, the generator must retain for each shipment the following information on-site:

i. the name and address of the facility receiving the excluded fuel for burning;

ii. the quantity of excluded fuel shipped and delivered;

iii. ...

iv. a cross-reference to the record of excluded fuel analysis or other information used to make the determination that the excluded fuel meets the specifications as required under Paragraph D.7 of this Section; and

v. ...

11. Records Retention. Records must be maintained for a period of three years. A generator must maintain a current fuel analysis plan during that three-year period.

12. Burner Certification to the Generator. Prior to submitting a notification to the state and regional

administrative authority, a generator of excluded fuel who intends to ship the excluded fuel off-site for burning must obtain a one-time written, signed statement from the burner:

a. certifying that the excluded fuel will only be burned in an industrial furnace or boiler, utility boiler, or hazardous waste incinerator, as required under Paragraph D.2 of this Section;

b. identifying the name and address of the facility that will burn the excluded fuel; and

c. certifying that the state in which the burner is located is authorized to exclude wastes as excluded fuel under the provisions of this Section.

13. Ineligible Waste Codes. Wastes that are listed as hazardous waste because of presence of dioxins or furans, as set out in LAC 33:V.4901.G, Table 6, are not eligible for this exclusion, and any fuel produced from or otherwise containing these wastes remains a hazardous waste subject to full RCRA hazardous waste management requirements.

14. Regulatory Status of Boiler Residues. Burning excluded fuel that was otherwise a hazardous waste listed under LAC 33:V.4901.B-D does not subject boiler residues, including bottom ash and emission control residues, to regulation as derived-from hazardous wastes.

15. Residues in Containers and Tank Systems Upon Cessation of Operations

a. Liquid and accumulated solid residues that remain in a container or tank system for more than 90 days after the container or tank system ceases to be operated for storage or transport of excluded fuel product are subject to LAC 33:V.Chapters 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 22, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43.

b. Liquid and accumulated solid residues that are removed from a container or tank system after the container or tank system ceases to be operated for storage or transport of excluded fuel product are solid wastes subject to regulation as hazardous waste if the waste exhibits a characteristic of hazardous waste under LAC 33:V.4903.B-E.2 or if the fuel were otherwise a hazardous waste listed under LAC 33:V.4901.B-E when the exclusion was claimed.

c. Liquid and accumulated solid residues that are removed from a container or tank system and which do not meet the specifications for exclusion under Subsection B or C of this Section are solid wastes subject to regulation as hazardous waste if:

i. the waste exhibits a characteristic of hazardous waste under LAC 33:V.4903.B-E.2; or

ii. the fuel were otherwise a hazardous waste listed under LAC 33:V.4901.B-E. The hazardous waste code for the listed waste applies to these liquid and accumulated solid residues.

16. Waiver of RCRA Closure Requirements. Interim status and permitted storage and combustion units, and generator storage units exempt from the permit requirements under LAC 33:V.1109.E, are not subject to the closure requirements of LAC 33:V.Chapters 9, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43; provided that the storage and combustion unit has been used to manage only hazardous waste that is subsequently excluded under the conditions of this Section, and that afterward will be used only to manage fuel excluded under this Section.

17. Spills and Leaks

a. Excluded fuel that is spilled or leaked and that therefore no longer meets the conditions of the exclusion is discarded and shall be managed as a hazardous waste if it exhibits a characteristic of hazardous waste under LAC 33:V.4903.B-E.2 or if the fuel were otherwise a hazardous waste listed in LAC 33:V.4901.B-E.

b. For excluded fuel that would have otherwise been a hazardous waste listed in LAC 33:V.4901.B-E and which is spilled or leaked, the hazardous waste code for the listed waste applies to the spilled or leaked material.

18. Nothing in this Section preempts, overrides, or otherwise negates the provisions in CERCLA Section 103, which establish reporting obligations for releases of hazardous substances, or the U.S. Department of Transportation requirements for hazardous materials in 49 CFR parts 171-180.

E. Failure to Comply with the Conditions of the Exclusion. An excluded fuel loses its exclusion status if any person managing the fuel fails to comply with the conditions of the exclusion under this Section. The material then must be managed as hazardous waste from the point of generation. In such situations, EPA or an authorized state agency may take enforcement action under RCRA section 3008(a).

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 25:489 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:305 (March 2001), LR 28:1010 (May 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 34:644 (April 2008), LR 34:1021 (June 2008), LR 38:791 (March 2012).

Herman Robinson, CPM
Executive Counsel

1203#008

RULE

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

Qualified Domestic Relations Orders (LAC 58:V.101)

The Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans ("Fund"), pursuant to R.S. 11:363(F), has amended LAC 58:V. The restatement and amendment repeals Section 101.D of Chapter 1 to conform their rules to the Supreme Court ruling in *LASERS v. McWilliams*, 06-2191 (La. 12/2/08), 996 So.2d 1036 (on rehearing). All currently stated rules of the fund, unless amended herein, shall remain in full force and effect.

Title 58

RETIREMENT

Part V. Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Chapter 1. Qualified Domestic Relations Orders §101. Determining Qualified Status of Domestic Relations Orders

A. Intent and Construction. These procedural rules are adopted in order to satisfy the requirements of R.S. 11:291, and shall be construed consistently with this purpose.

B. The purpose of these rules is to establish the trustees' willingness to recognize and enforce any QDRO that meets the requirements set forth herein.

C. It is further intended that the provisions of R.S. 11:291 and 292 be strictly observed. Therefore, the trustees shall not honor the terms of any QDRO:

1. that purports to require the fund to provide any type or benefits, or any option, not otherwise provided under the fund;

2. that requires the fund to provide increased benefits (determined on the basis of actuarial value);

3. that requires payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a QDRO;

4. that requires the payment of benefits to an alternate payee prior to the date the participant terminates employment and his retirement benefits commence; or

5. that allow the alternate payee to elect a form of benefit payable in any manner other than over the life of the participant when the order is presented to the fund after the participant has already begun receiving pension benefits.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:3363.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Firefighters' Pension and Relief Fund for the City of New Orleans, LR 16:501 (June 1990), amended by the Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity, LR 23:1304 (October 1997), LR 30:1685 (August 2004), LR 38:796 (March 2012)

Louis L. Robein
Fund Attorney

1203#011

RULE

**Office of the Governor
Division of Administration
Office of State Uniform Payroll**

Payroll Deduction
(LAC 4:III.101, 106, 112, 114, 127 and 131)

Editor's Note: This Rule was printed in error in the January 20, 2012 edition of the *Louisiana Register* on pages 47-48. The effective date of this Rule is March 20, 2012.

In accordance with R.S. 42:455, notwithstanding any other provision of law to the contrary, the Office of the Governor, Division of Administration, Office of State Uniform Payroll adopts amendments to the rule regarding payroll deductions for state employees. The purpose of the amendment is to adjust the timelines for the submission of applications, policy changes, and enhancements for statewide vendor deductions so that they coincide with the new Office of Group Benefits Flexible Benefits Plan year and to make technical changes.

**Title 4
ADMINISTRATION
Part III. Payroll**

Chapter 1. Payroll Deductions

§101. Definitions

Administrative Coordinator—a statewide vendor designated representative who provides the single authorized contact for communication between the vendor and state departments/agencies, company representatives, the Division of Administration, Office of State Uniform Payroll, payroll systems outside of the LaGov HCM payroll system and any administrative contract(or).

Agency Number—three digit identifier representing a single agency in the LaGov HCM payroll system which serves as a key for processing and reporting.

Flexible Benefits Plan Year—the annual period of time designated for participation (e.g., January 1 through December 31).

Integrated Statewide Information System Human Resource Payroll System (ISIS HR)—Repealed.

LaGov Human Capital Management Payroll System (LaGov HCM)—the statewide system administered by the Division of Administration, Office of State Uniform Payroll to provide uniform payroll services to state agencies.

Statutory Vendors—any entity having deductions mandated or permitted by federal or state statute which includes, but is not limited to union dues, credit unions, IRC §457 and §403(b) plans, health and life insurance products sponsored by the Office of Group Benefits, retirement systems, Student Tuition Assistance and Revenue Trust Program (START), and qualified United Way entities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1026 (May 2000), LR 32:84 (January 2006), LR 38:797 (March 2012).

§106. Statewide Vendor Annual Renewal and New Application Process

A. ...

B. Written notice of requests for a new statewide vendor payroll deduction or for current vendors to add additional products or to add additional policy forms or service plans under the current products should be sent to OSUP prior to July 1 annually, in order for the vendor to receive an application form from OSUP. Applications for the purpose of providing deductions for IRA's, annuities, noninsurance investment programs or group plans are not permitted.

C. On or before August 1 annually, OSUP will provide deduction application forms along with instructions for completion to each renewal and new entity on file.

D. On or before August 31 annually, renewal and new applications must be completed and submitted to the Division of Administration, Office of State Uniform Payroll, P.O. Box 94095, Baton Rouge, LA 70804 or 1201 North Third Street, Ste. 6-150, 70802.

1. - 2.g. ...

E. On or before October 1 each year, OSUP will conduct a compliance review and shall notify vendors of any products that will be removed due to not meeting the participation requirements in §114.C.3. In a separate letter,

the vendor will be notified whether their annual application has been conditionally approved.

F. Between September and April each year, the EPBC shall conduct a thorough review of all products authorized for deduction and new applications.

1. - 3. ...

G. On or before April 1 annually, the EPBC shall issue a summary report of opinions resulting from the annual review of products and new applications, along with recommended actions to the commissioner of administration.

H. ...

I. On or before May 1 annually, the commissioner of administration shall advise OSUP whether EPBC recommendations relative to current products and new applications have been accepted or denied.

J. On or before May 31 annually, OSUP will:

1. - 2. ...

3. notify LaGov HCM payroll system user agencies and other departments/agencies and governing boards of authorized deductions by vendor and product name, providing LaGov HCM system information and the effective date. Governing boards shall notify universities.

K. Payroll systems outside of the LaGov HCM payroll system will advise vendors whether the deduction will be established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:86 (January 2006), LR 38:797 (March 2012).

§112. Statewide Vendor Requests for Enhancements/Changes to Products

A. Requests for enhancements to existing statewide vendor products, policies or service plans must be submitted to OSUP for review and approval by April 1 and October 1 annually.

1. - 1.e. ...

2. OSUP and the EPBC will review the request and notify the vendor of approval or denial by June 1 and December 1 annually.

a. If approved, OSUP will include in the approval notification the procedures for implementing the enhancement for July 1 and January 1 annually.

b. ...

B. Notification of policy changes must be submitted to OSUP by July 1 annually.

1. - 1.c. ...

2. OSUP will review the information submitted and notify the vendor by September 30 annually and provide procedures for implementing the policy change for January 1 annually.

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 26:1027 (May 2000), amended LR 32:87 (January 2006), LR 38:798 (March 2012).

§114. Statewide Vendor Requirements and Responsibility

A. - C.2. ...

3. maintain individual product (product categories as defined by OSUP) participation levels that meet or exceed 100 employees paid through the LaGov HCM payroll system. Vendors will be allowed 12 months after initial product approval to meet the minimum product participation requirements;

4. - 5.c. ...

d. the authorization must specify product name, IRC §125 eligibility, monthly premium or fee, and the semi-monthly (24 annually) premium or fee. Statewide vendor deductions in the LaGov HCM payroll system must be semi-monthly deduction amounts only (to the second decimal place). Payroll systems outside of the LaGov HCM payroll system which permit monthly deductions may continue same;

5.e. - 8.a. ...

b. monthly reconciliation exception listing shall identify the employee by Social Security number and payroll agency number and shall be grouped within payroll agency numbers for LaGov HCM payroll system agencies and similarly for payroll systems outside of the LaGov HCM payroll system;

9. furnish evidence of reconciliation to OSUP as requested by that office. Like verification may be required by other payroll systems outside of the LaGov HCM payroll system;

C.10. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:87 (January 2006), LR 38:798 (March 2012).

§127. Department/Agency Responsibility

A. - B.5. ...

6. process refunds for amounts previously deducted from any vendor which receives LaGov HCM payments only as directed by OSUP policy. Payroll systems outside of the LaGov HCM payroll system shall establish written policy for remittance and refund of deductions taken;

7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1031 (May 2000), LR 32:90 (January 2006), LR 38:798 (March 2012).

§131. Fees

A. Data, information, reports, or any other services provided to any vendor or any other party by the LaGov HCM payroll system or other state payroll system may be subject to payment of a fee for the cost of providing said data, information, reports, and/or services in accordance with the Uniform Fee Schedule established by rule promulgated by the DOA under R.S. 42:458.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May

1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1031 (May 2000), LR 32:90 (January 2006), LR 38:798 (March 2012).

Steven Procopio, Ph.D.
Assistant Commissioner

1203#040

RULE

**Office of the Governor
Division of Administration
Tax Commission**

Ad Valorem Taxation

(LAC 61:V. 101, 303, 304, 703, 907, 1101, 1103, 1307, 1503, 2503, 2713, 2717, 3101, 3013, 3105, 3106 and 3107)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, the Tax Commission has adopted, amended and/or repealed Sections of the Louisiana Tax Commission Real/Personal Property Rules and Regulations for use in the 2012 (2013 Orleans Parish) tax year.

This Rule is necessary in order for ad valorem tax assessment tables to be disseminated to property owners and local tax assessors no later than the statutory valuation date of record of January 1, 2012. Cost indexes required to finalize these assessment tables were not available to this office until late October 2011.

Title 61

REVENUE AND TAXATION

Part V. Ad Valorem Taxation

Chapter 1. Constitutional and Statutory Guides to Property Taxation

§101. Constitutional Principles for Property Taxation

A. - E.1. ...

F. Homestead Exemptions

1. General Provisions

a. The Louisiana Constitution permits no other property tax exemptions except those provided in the constitution.

b. The constitution exempts to the extent of \$7,500 of assessed value, except in those parishes whereby voters approved that the next \$7,500 of the assessed valuation on property receiving the homestead exemption which is owned and occupied by a veteran with a service connected disability rating of 100 percent by the United States Department of Veterans Affairs shall be exempt from ad valorem taxation. (see Louisiana Constitutional Article 7, §21(K)(1)(2)(3) regarding the additional exemption):

1.b.i. - 3.h.

G. Special Assessment Level

1. - 1.d. ...

2. Any person or persons shall be prohibited from receiving the special assessment as provided in this Section if such person's or persons' adjusted gross income, for the year prior to the application for the special assessment, exceeds \$67,670 for tax year 2012 (2013 Orleans Parish). For persons applying for the special assessment whose filing status is married filing separately, the adjusted gross income for purposes of this Section shall be determined by combining the adjusted gross income on both federal tax returns.

3. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, §18.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 15:1097 (December 1989), amended by the Department of Revenue, Tax Commission, LR 24:477 (March 1998), LR 26:506 (March 2000), LR 31:700 (March 2005), LR 32:425 (March 2006), LR 33:489 (March 2007), LR 34:673 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:799 (March 2012).

Chapter 3. Real and Personal Property

§303. Real Property

A. - C.2.a. ...

D. The Louisiana Tax Commission has ordered all property to be reappraised for the 2012 tax year in all parishes. All property is to be valued as of January 1, 2011.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 7:44 (February 1981), amended by the Department of Revenue and Taxation, Tax Commission, LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 17:611 (June 1991), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 25:312 (February 1999), LR 26:506 (March 2000), LR 29:367 (March 2003), LR 30:487 (March 2004), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:765 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:799 (March 2012).

§304. Electronic Change Order Specifications, Property Classifications Standards and Electronic Tax Roll Export Specifications

A. Electronic Change Order Specifications

B. Property Classifications Standards

1. Beginning with tax year 2012 (2013 Orleans Parish), all parishes must adhere to the Property Classifications Standards and PC codes listed in §304.B. This will do away with the PC_CODES.TXT file for those parishes currently submitting.

C. Electronic Tax Roll Export Specifications

Parish Information (Parish.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Gov_name	Character	30	Yes	Parish name (Example: St. Tammany Parish)
Gov_agency	Character	40	Yes	Agency name (Example: Assessor's Office)
Address1	Character	30	Yes	Agency address line 1.
Address2	Character	30	Yes	Agency address line 2.

Parish Information (Parish.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (Format: 1999, 2000,2001,2002,2003,2004, etc.)
City	Character	20	Yes	City name (Example: Covington)
State	Character	2	Yes	State name (Example: LA)
Zip	Numeric	5	Yes	Zip code (Example 70433).
Zip4	Character	4	Yes	Extended zip code (9999).

Assessment Information (Assmt.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Parcel_no	Character	20	Yes	Parcel Identification Number (PIN). (If your system currently does not support PINs use the assessment number as the PIN.)
Assessment_type	Character	2	Yes	"RE" = Real Estate, "PP" = Personal Property, "PS" = Public Service
Assessment_status	Character	2	Yes	"AC" = Active, "AJ" = Adjudicated, "EX" = Exempt/Tax Free
Homestead_exempt	Numeric	1	Yes	0 = None (Default), 1 = Homestead Exemption, 2 = Over 65 Freeze
homestead_percent	Numeric	6.2	Yes	Homestead Exemption percentage to be applied to assessment. (Format: 100.00 (Default) = 100%)
Restoration_tax_expmt	Character	1	Yes	Restoration Tax Abatements on historical property. "N" = No (Default), "Y" = Yes
Tax_acct	Numeric	6	No	Tax account or tax bill number for grouping assessments together.
Place_FIPS	Numeric	5	Yes	FIPS Place Code of Ward or Municipality. (See FIPS Table)
Taxpayer_id	Numeric	10	No	Taxpayer's identification number. (Social Security or Federal ID numbers.)
Taxpayer_name	Character	50	Yes	Taxpayer's name.
Contact_name	Character	50	No	Contact's name for company taxpayers or for in care of (C/O) contacts.
Taxpayer_addr1	Character	40	Yes	Taxpayer's address line 1.
Taxpayer_addr2	Character	40	Yes	Taxpayer's address line 2.
Taxpayer_addr3	Character	40	No	Taxpayer's address line 3.
Transfer_date	Character	10	No	Date of purchase. (Sample: ~01/01/1999~)

Assessment Value Information (Avalue.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax Year Submitting (Format: 1999, 2000,2001,2002,2003,2004, Etc.)
FIPS_code	Numeric	5	Yes	Parish identification number (PIN). (See FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Market_value	Numeric	12	Yes	Fair Market Value of the real estate property class or the original cost of the personal property class.
Total_value	Numeric	10	Yes	Total assessed value of the property. (Total of the Taxpayer's (Taxable) share and Homestead credit added together.)
Homestead_credit	Numeric	4	Yes	Assessed value to be credited by Homestead exemption. (Not to exceed 7,500 of Assessed Value)
Taxpayer_value	Numeric	10	Yes	Assessed value to be paid by Taxpayer (Taxable amount).
Quantity	Numeric	6	Yes	Quantity units in the number of Front Feet, Square Feet, Lot(s), Acre(s), Improvement(s) or Year(s) for Personal Property.
Units	Character	1	Yes	Unit of Measure (Format: "F" = Front Feet, "S" = Square Feet, "L" = Lots, "A" = Acres, "I" = Improvements and "Y" = Year.)
LTC_sub-class_code	Character	4	Yes	LTC Property Sub-Class Code. (See LTC Property Class Code Listings.) Assessor's property classification codes can be used in lieu of the Tax Commission's Property Classification Codes until Tax Year 2006 [Orleans 2007].)
Other_exempt	Numeric	1	Yes	Old status of any special exemptions to be applied to item 1. 0 = None (Default), 1 = Commerce/Industry (Ten Year Exemption), 2 = Agricultural, 3 = Institutional

Property Class Code Information (PC_Codes.txt) (Required If Not Using LTC Standard Codes)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Assessor_class_code	Character	4	Yes	Assessor's property classification code to be used in lieu of the Tax Commission's Property Classification Codes until Tax Year 2006 [Orleans 2007].)
Class_code_description	Character	30	Yes	Assessor's property class code description.

Assessment Millage Information (Amillage.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.

Group_description	Character	35	Yes	Millage description if not part of a group or the group name of a millage.
Millage	Numeric	6.2	Yes	Millage (Format: 999.99)
Mill_type	Character	1	Yes	M = millage, f = flat/ltc/variable fees, a = acreage, o = overlay/partial
Place_FIPS	Numeric	5	Yes	Federal place code of taxing authority levying millage. (see FIPS table)
Parish_city	Character	1	Yes	Millage type indicator. "p" = parish tax, "c" = city tax (this field indicates which tax collector is collecting the millage.)
Percent	Numeric	6.2	Yes	Percent of assessed value applicable to the millage. (Applies to split district millages, use 100.00 as default value if percent is not applied.)
Total_tax	Numeric	11.2	Yes	Total taxes assessed to the property. (format: 99999999.99)
Homestead_credit	Numeric	11.2	Yes	Homestead exemption share of taxes credited. (Format: 99999999.99)
Taxpayer_tax	Numeric	11.2	Yes	Taxpayer's share of taxes owed. (format: 99999999.99)

Millage Group Information (Tgroup.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Group_description	Character	35	Yes	Group description or name of millage.
Millage_description	Character	35	Yes	Description or name of millage.
Millage	Numeric	6.2	Yes	Millage (Format: 999.99)
Flat_mill	Numeric	1	Yes	Indicates flat fee (0=no flat fee, 1=flat fee used)
Flat_fee	Numeric	6.2	Yes	Flat fee amount (format 999.99)

Parcel Information (Parcel.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (Format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Parcel_no	Character	20	Yes	Parcel Identification Number (PIN). (If your system currently does not support PINs use the assessment number as the PIN.)
Town_range	Character	7	No	Township/Range. (Format: T7S-R8E)
Section_no	Numeric	3	No	Section number parcel is located.
Ward_no	Character	3	Yes	Ward identification number.
Subd_name	Character	30	No	Subdivision name if available of parcel location.
Block_no	Character	4	No	Subdivision or city block/square number.
Lot_no	Character	4	No	First subdivision or city lot number owned by a particular owner.
Place_FIPS	Numeric	5	Yes	Federal Place Code of Taxing Authority. (See FIPS table)
Tax_dist	Numeric	3	No	Tax district number if available.
Par_address	Character	50	No	Parcel address. (E911 address)
Occupancy	Character	50	No	What the structure is being used for. (Residence, Office, Retail, etc.)
Vacant_lot	Character	1	No	"Y" = Yes, "N" = No (Default)
Transfer_date	Character	10	No	Date of purchase. (Format: ~01/01/1999~)
Purchase_price	Numeric	12.2	Yes	Purchase price of the real property only. (Format: 999999999.99) (Sales price required on all recent sales of real estate only.)
Verified	Character	1	Yes	Sale has been confirmed by the Assessor's office as being arms length. "Y" = Yes, "N" = No (Default)
Conv_book	Character	4	Yes	Conveyance book number. (Conveyance book/page or instrument number required on all recent real estate sales.)
Conv_folio	Character	4	Yes	Conveyance page (folio) number. (Conveyance book/page or instrument number required on all recent real estate sales.)
Instr_no	Numeric	8	Yes	Conveyance instrument number. (Conveyance book/page or instrument number required on all recent real estate sales.)
Instr_type	Character	20	Yes	Type of instrument. (Cash, Mortgage, Bond for Deed, etc.)
Lender_id	Character	8	No	Lender of Mortgage Company's identification number supplied by Tax Commission.

Legal Description Information (Legal.txt) (Required)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Legal_description	Character	unlimited	Yes	Full legal description

Additional Owner Information (Owners.txt) (Optional)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)

FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Taxpayer_id	Numeric	10	No	Taxpayer's identification number.
Own_percent	Numeric	6.2	No	Percent of ownership. (format: 999.99)
Taxpayer_name	Character	50	Yes	Taxpayer's name.
Contact_name	Character	50	No	Contact's name.
Taxpayer_addr1	Character	40	No	Taxpayer's address line 1.
Taxpayer_addr2	Character	40	No	Taxpayer's address line 2.
Taxpayer_addr3	Character	40	No	Taxpayer's address line 3.

Document Information (Document.txt) (Optional)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (see FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Path	Character	Variable length	Yes	Full path of document and file name (includes file extension). (jpg format)
Description	Character	Variable length	Yes	Description of the document.

Improvement Information (Improve.txt) (optional)				
Field Name	Field Type	Field Length	Required	Comments
Tax_year	Numeric	4	Yes	Tax year submitting (format: 1999, 2000,2001,2002,2003,2004, etc.)
FIPS_code	Numeric	5	Yes	Parish identification number. (See FIPS table.)
Assessment_no	Character	20	Yes	Assessment number.
Building_use	Character	1	Yes	"C" = commercial, "r" = residential
Structure_no	Character	12	No	Structure number of improvement.
Imp_asqft	Numeric	9.2	No	Square footage of detached auxiliary building. (Format: 999999.99)
Imp_gsqft	Numeric	9.2	Yes	Square footage of carports or garages. (Format: 999999.99)
Imp_lsqft	Numeric	9.2	Yes	Square footage of living, heated or useable area. (Format: 999999.99)
Imp_nsqft	Numeric	9.2	Yes	Square footage of porches, non-living areas, etc. (Format: 999999.99)
Imp_tsqft	Numeric	9.2	Yes	Total square footage of all structures assessed. (Format: 999999.99)
No_baths	Numeric	3.1	Yes	Number of bathrooms.
No_bedrooms	Numeric	2	Yes	Number of bedrooms.
Year_built	Numeric	4	Yes	Year built. (Format: 9999)
Year_renov	Numeric	4	No	Year renovated. (Format: 9999)
Life_expectancy	Numeric	2	Yes	Life expectancy of structure or improvement.
Fact_cond	Numeric	4	No	Condition of improvement.
Fact_qual	Numeric	4	No	Quality of construction.
Fact_wall	Numeric	4	No	Wall construction.
Fact_roof	Numeric	4	No	Roof construction.

Place FIPS Information (FIPS.txt)				
Field Name	Field Type	Field Length	Required	Comments
Parish_name	Character	35	Yes	Parish name
FIPS_code	Numeric	5	Yes	Parish FIPS code
Place_name	Character	30	Yes	Place name
Place_FIPS	Numeric	5	Yes	Place FIPS code
Zipcode	Numeric	5	Yes	Place zip code
Class_code	Character	2	Yes	Place classification code – See FIPS class code definitions
Ward_no	Character	3	If applicable	Place ward number if applicable
Tax_name	Character	45	Yes	Taxing entity name
Tax_addr1	Character	30	Yes	Taxing entity address
Tax_addr2	Character	30	No	Taxing entity address line 2
Tax_city	Character	20	Yes	Taxing entity city
Tax_state	Character	2	Yes	Taxing entity state
Tax_zip	Numeric	5	Yes	Taxing entity zip

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution of 1974, Article VII, §18 and R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 31:703 (March 2005), amended LR 32:427 (March 2006), LR 36:765 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:799 (March 2012).

Chapter 7. Watercraft

§703. Tables—Watercraft

A. Floating Equipment—Motor Vessels

Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2011	0.982	1	94	.92
2010	1.013	2	87	.88
2009	1.006	3	80	.80
2008	1.035	4	73	.76
2007	1.075	5	66	.71
2006	1.134	6	58	.66

Table 703.A Floating Equipment—Motor Vessels				
Cost Index (Average)		Average Economic Life 12 Years		
2005	1.187	7	50	.59
2004	1.276	8	43	.55
2003	1.320	9	36	.48
2002	1.342	10	29	.39
2001	1.351	11	24	.32
2000	1.362	12	22	.30
1999	1.387	13	20	.28

B. Floating Equipment—Barges (Non-Motorized)

Table 703.B Floating Equipment—Barges (Non-Motorized)				
Cost Index Average		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2011	0.982	1	97	.95
2010	1.013	2	93	.94
2009	1.006	3	90	.91
2008	1.035	4	86	.89
2007	1.075	5	82	.88
2006	1.134	6	78	.88
2005	1.187	7	74	.88
2004	1.276	8	70	.87
2003	1.320	9	65	.86
2002	1.342	10	60	.81
2001	1.351	11	55	.74
2000	1.362	12	50	.68
1999	1.387	13	45	.62
1998	1.391	14	40	.56
1997	1.403	15	35	.49
1996	1.425	16	31	.44
1995	1.447	17	27	.39
1994	1.499	18	24	.36
1993	1.541	19	22	.34
1992	1.571	20	21	.33
1991	1.590	21	20	.32

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:924 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:204 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 25:312 (February 1999), LR 26:506 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:487 (March 2004), LR 31:715 (March 2005), LR 32:430 (March 2006), LR 33:490 (March 2007), LR 34:678 (April 2008), LR 35:492 (March 2009), LR 36:772 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1394 (May 2011), LR 38:802 (March 2012).

Chapter 9. Oil and Gas Properties

§907. Valuation of Oil, Gas, and Other Wells

A. - A.7. ...

1. Oil, Gas and Associated Wells; Region 1—North Louisiana

Table 907.A.1 Oil, Gas and Associated Wells; Region 1—North Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	35.72	124.98	5.36	18.75
1,250-2,499 ft.	32.24	91.90	4.84	13.79
2,500-3,749 ft.	25.34	60.86	3.80	9.13
3,750-4,999 ft.	35.04	60.64	5.26	9.10
5,000-7,499 ft.	41.21	59.19	6.18	8.88
7,500-9,999 ft.	90.35	79.78	13.55	11.97
10,000-12,499 ft.	263.47	96.79	39.52	14.52
12,500-14,999 ft.	N/A	146.14	N/A	21.92
15,000-Deeper ft.	N/A	166.65	N/A	25.00

2. Oil, Gas and Associated Wells; Region 2—South Louisiana

Table 907.A.2 Oil, Gas and Associated Wells; Region 2—South Louisiana				
Producing Depths	Cost—New By Depth, Per Foot		15% of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0-1,249 ft.	274.56	124.16	41.18	18.62
1,250-2,499 ft.	94.81	206.37	14.22	30.96
2,500-3,749 ft.	92.58	164.53	13.89	24.68
3,750-4,999 ft.	81.61	131.62	12.24	19.74
5,000-7,499 ft.	111.49	149.50	16.72	22.43
7,500-9,999 ft.	152.09	156.53	22.81	23.48
10,000-12,499 ft.	207.40	204.61	31.11	30.69
12,500-14,999 ft.	272.06	264.72	40.81	39.71
15,000-17,499 ft.	440.68	354.42	66.10	53.16
17,500-19,999 ft.	538.06	502.02	80.71	75.30
20,000-Deeper ft.	287.31	753.69	43.10	113.05

3. Oil, Gas and Associated Wells; Region 3—Offshore State Waters

Table 907.A.3 Oil, Gas and Associated Wells; Region 3—Offshore State Waters*				
Producing Depths	Cost—New By Depth, Per Foot		15% Of Cost—New By Depth, Per Foot	
	\$ Oil	\$ Gas	\$ Oil	\$ Gas
0 -1,249 ft.	N/A	N/A	N/A	N/A
1,250 -2,499 ft.	1,376.27	1,005.62	206.44	150.84
2,500 -3,749 ft.	707.69	772.86	106.15	115.93
3,750 -4,999 ft.	1,010.16	708.68	151.52	106.30
5,000 -7,499 ft.	502.69	656.39	75.40	98.46
7,500 -9,999 ft.	637.33	621.14	95.60	93.17
10,000 -12,499 ft.	721.51	629.62	108.23	94.44
12,500 -14,999 ft.	627.51	612.73	94.13	91.91
15,000 -17,499 ft.	432.51	635.77	64.88	95.37
17,500 -19,999 ft.	N/A	607.81	N/A	91.17
20,000 - Deeper ft.	N/A	955.42	N/A	143.31

B. The determination of whether a well is a Region 2 or Region 3 well is ascertained from its onshore/offshore status as designated on the permit to drill or amended permit to drill form (Location of Wells Section), located at the Department of Natural Resources as of January 1 of each tax year. Each assessor is required to confirm the onshore/offshore status of wells located within their parish by referring to the permit to drill or amended permit to drill form on file at the Department of Natural Resources.

1. Parishes Considered to be Located in Region I

Table 907.B.1 Parishes Considered to be Located in Region I			
Bienville	DeSoto	Madison	Tensas
Bossier	East Carroll	Morehouse	Union
Caddo	Franklin	Natchitoches	Webster
Caldwell	Grant	Ouachita	West Carroll
Catahoula	Jackson	Red River	Winn
Claiborne	LaSalle	Richland	
Concordia	Lincoln	Sabine	

NOTE: All wells in parishes not listed above are located in Region 2 or Region 3.

2. Serial Number to Percent Good Conversion Chart

Table 907.B.2 Serial Number to Percent Good Conversion Chart			
Year	Beginning Serial Number	Ending Serial Number	17 Year Life Percent Good
2011	242592	Higher	96
2010	240636	242591	91
2009	239277	240635	87
2008	236927	239276	82
2007	234780	236926	77
2006	232639	234779	73
2005	230643	232638	68
2004	229010	230642	62
2003	227742	229009	57
2002	226717	227741	51
2001	225352	226716	46
2000	223899	225351	40
1999	222882	223898	35
1998	221596	222881	31
1997	220034	221595	28
1996	218653	220033	25
1995	217588	218652	21
1994	Lower	217587	20 *
VAR.	900000	Higher	50

*Reflects residual or floor rate.

NOTE: For any serial number categories not listed above, use year well completed to determine appropriate percent good. If spud date is later than year indicated by serial number; or, if serial number is unknown, use spud date to determine appropriate percent good.

C. Surface Equipment

1. Listed below is the cost-new of major items used in the production, storage, transmission and sale of oil and gas. Any equipment not shown shall be assessed on an individual basis.

2. All surface equipment, including other property associated or used in connection with the oil and gas industry in the field of operation, must be rendered in accordance with guidelines established by the Tax Commission and in accordance with requirements set forth on LAT Form 12-Personal Property Tax Report—Oil and Gas Property.

3. Oil and gas personal property will be assessed in seven major categories, as follows:

- a. oil, gas and associated wells;
- b. oil and gas equipment (surface equipment);
- c. tanks (surface equipment);
- d. lines (oil and gas lease lines);
- e. inventories (material and supplies);
- f. field improvements (docks, buildings, etc.);
- g. other property (not included above).

4. The cost-new values listed below are to be adjusted to allow depreciation by use of the appropriate percent good listed in Table 907.B.2. The average age of the well/lease/field will determine the appropriate year to be used for this purpose.

5. Functional and/or economic obsolescence shall be considered in the analysis of fair market value as substantiated by the taxpayer in writing. Consistent with Louisiana R.S. 47:1957, the assessor may request additional documentation.

6. Sales, properly documented, should be considered by the assessor as fair market value, provided the sale meets all tests relative to it being a valid sale.

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Actuators—(see Metering Equipment)	
Automatic Control Equipment—(see Safety Systems)	
Automatic Tank Switch Unit—(see Metering Equipment)	
Barges - Concrete—(assessed on an individual basis)	
Barges - Storage—(assessed on an individual basis)	
Barges - Utility—(assessed on an individual basis)	
Barges - Work—(assessed on an individual basis)	
Communication Equipment—(see Telecommunications)	
Compressors (Gas Rental)	620
1 - 49 HP	1,240
50 - 99 HP	1,010
100 - 999 HP	775
1,000 - 1,499 HP	680
1,500 HP and Up	
Dampeners—(see Metering Equipment—"Recorders")	
DESORBERS—(no metering equipment included):	107,580
125#	118,620
300#	134,980
500#	
Destroilets—(see Metering Equipment—"Regulators")	
Desurgers—(see Metering Equipment—"Regulators")	
Desilters—(see Metering Equipment—"Regulators")	
Diatrollers—(see Metering Equipment—"Regulators")	
Docks, Platforms, Buildings—(assessed on an individual basis)	
Dry Dehydrators (Driers)—(see Scrubbers)	
Engines-Unattached—(only includes engine and skids):	340
Per Horsepower	
Evaporators—(assessed on an individual basis)	
Expander Unit—(no metering equipment included):	39,460
Per Unit	
Flow Splitters—(no metering equipment included):	19,220
48 In. Diameter Vessel	25,450
72 In. Diameter Vessel	39,010
96 In. Diameter Vessel	55,420
120 In. Diameter Vessel	
Fire Control System—(assessed on an individual basis)	
Furniture and Fixtures—(assessed on an individual basis) (Field operations only, according to location.)	
Gas Compressors-Package Unit—(Skids, scrubbers, cooling system, and power controls. No metering or regulating equipment.):	1,460
50 HP and less—Per HP	1,260
51 HP to 100 HP—Per HP	920
101 HP and higher—Per HP	
Gas Coolers—(no metering equipment):	30,310
5,000 MCF/D	34,140
10,000 MCF/D	106,210
20,000 MCF/D	240,950
50,000 MCF/D	394,630
100,000 MCF/D	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Generators—Package Unit only -(no special installation) Per K.W.	230
Glycol Dehydration-Package Unit—(Including pressure gauge, relief valve and regulator. No other metering equipment.):	21,280
Up to 4.0 MMCF/D	23,740
4.1 to 5.0 MMCF/D	45,750
5.1 to 10.0 MMCF/D	63,660
10.1 to 15.0 MMCF/D	86,650
15.1 to 20.0 MMCF/D	112,670
20.1 to 25.0 MMCF/D	214,020
25.1 to 30.0 MMCF/D	239,070
30.1 to 50.0 MMCF/D	297,400
50.1 to 75.0 MMCF/D	343,160
75.1 & Up MMCF/D	
Heaters—(Includes unit, safety valves, regulators and automatic shut-down. No metering equipment.):	7,380
Steam Bath—Direct Heater:	9,270
24 In. Diameter Vessel - 250,000 BTU/HR Rate	11,210
30 In. Diameter Vessel - 500,000 BTU/HR Rate	16,590
36 In. Diameter Vessel - 750,000 BTU/HR Rate	20,480
48 In. Diameter Vessel - 1,000,000 BTU/HR Rate	6,290
60 In. Diameter Vessel - 1,500,000 BTU/HR Rate	8,640
Water Bath—Indirect Heater:	11,270
24 In. Diameter Vessel - 250,000 BTU/HR Rate	15,960
30 In. Diameter Vessel - 500,000 BTU/HR Rate	20,420
36 In. Diameter Vessel - 750,000 BTU/HR Rate	8,060
48 In. Diameter Vessel - 1,000,000 BTU/HR Rate	10,070
60 In. Diameter Vessel - 1,500,000 BTU/HR Rate	15,100
Steam—(Steam Generators):	17,330
24 In. Diameter Vessel - 250,000 BTU/HR Rate	19,620
30 In. Diameter Vessel - 450,000 BTU/HR Rate	31,000
36 In. Diameter Vessel - 500 to 750,000 BTU/HR Rate	37,230
48 In. Diameter Vessel - 1 to 2,000,000 BTU/HR Rate	
60 In. Diameter Vessel - 2 to 3,000,000 BTU/HR Rate	
72 In. Diameter Vessel - 3 to 6,000,000 BTU/HR Rate	
96 In. Diameter Vessel - 6 to 8,000,000 BTU/HR Rate	
Heat Exchange Units-Skid Mounted—(see Production Units)	
Heater Treaters—(Necessary controls, gauges, valves and piping. No metering equipment included.):	16,130
Heater - Treaters - (non-metering):	20,760
4 x 20 ft.	21,730
4 x 27 ft.	27,340
6 x 20 ft.	34,830
6 x 27 ft.	40,780
8 x 20 ft.	46,040
8 x 27 ft.	54,160
10 x 20 ft.	
10 x 27 ft.	
L.A.C.T. (Lease Automatic Custody Transfer)—see Metering Equipment)	
JT Skid (Low Temperature Extraction)—(includes safety valves, temperature controllers, chokes, regulators, metering equipment, etc.—complete unit.):	40,040
Up to 2 MMCF/D	57,190
Up to 5 MMCF/D	137,260
Up to 10 MMCF/D	228,770
Up to 20 MMCF/D	
Liqua Meter Units—(see Metering Equipment)	
Manifolds—(see Metering Equipment)	
Material & Supplies-Inventories—(assessed on an individual basis)	
Meter Calibrating Vessels—(see Metering Equipment)	
Meter Prover Tanks—(see Metering Equipment)	
Meter Runs—(see Metering Equipment)	
Meter Control Stations—(not considered Communication Equipment) - (assessed on an individual basis)	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Metering Equipment	
Actuators—hydraulic, pneumatic & electric valves	6,230
Controllers—time cycle valve - valve controlling device (also known as Intermittent)	1,940
Fluid Meters:	4,750
1 Level Control	6,120
24 In. Diameter Vessel - 1/2 bbl. Dump	8,460
30 In. Diameter Vessel - 1 bbl. Dump	4,460
36 In. Diameter Vessel - 2 bbl. Dump	5,380
2 Level Control	6,750
20 In. Diameter Vessel - 1/2 bbl. Dump	9,090
24 In. Diameter Vessel - 1/2 bbl. Dump	
30 In. Diameter Vessel - 1 bbl. Dump	
36 In. Diameter Vessel - 2 bbl. Dump	
L.A.C.T. and A.T.S. Units:	
30 lb. Discharge	29,970
60 lb. Discharge	34,140
Manifolds—Manual Operated:	23,510
High Pressure	7,950
per well	11,380
per valve	3,770
Low Pressure	
per well	
per valve	
Manifolds—Automatic Operated:	
High Pressure	42,490
per well	14,010
per valve	30,310
Low Pressure	10,240
per well	
per valve	
NOTE: Automatic Operated System includes gas hydraulic and pneumatic valve actuators, (or motorized valves), block valves, flow monitors-in addition to normal equipment found on manual operated system. No Metering Equipment Included.	
Meter Runs—piping, valves & supports—no meters:	
2 In. piping and valve	6,410
3 In. piping and valve	7,210
4 In. piping and valve	8,690
6 In. piping and valve	12,120
8 In. piping and valve	18,210
10 In. piping and valve	24,250
12 In. piping and valve	30,310
14 In. piping and valve	41,290
16 In. piping and valve	53,930
18 In. piping and valve	66,800
20 In. piping and valve	86,820
22 In. piping and valve	109,410
24 In. piping and valve	133,950
Metering Vessels (Accumulators):	3,720
1 bbl. calibration plate (20 x 9)	4,000
5 bbl. calibration plate (24 x 10)	5,600
7.5 bbl. calibration plate (30 x 10)	6,980
10 bbl. calibration plate (36 x 10)	2,570
Recorders (Meters)—Includes both static element and tube drive pulsation dampener-also one and two pen operations. per meter	340
Solar Panel (also see Telecommunications) per unit (10' x 10')	
Pipe Lines—Lease Lines	
Steel	18,640
2 In. nominal size - per mile	25,110
2 1/2 In. nominal size - per mile	32,030
3 & 3 1/2 In. nominal size - per mile	55,080
4, 4 1/2 & 5 In. nominal size - per mile	80,870
6 In. nominal size - per mile	10,240
Poly Pipe	13,780
2 In. nominal size - per mile	17,620
2 1/2 In. nominal size - per mile	30,260
3 In. nominal size - per mile	44,440
4 In. nominal size - per mile	
6 In. nominal size - per mile	

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
Plastic-Fiberglass 2 In. nominal size - per mile 3 In. nominal size - per mile 4 In. nominal size - per mile 6 In. nominal size - per mile NOTE: Allow 90% obsolescence credit for lines that are inactive, idle, open on both ends and dormant, which are being carried on corporate records solely for the purpose of retaining right of ways on the land and/or due to excessive capital outlay to refurbish or remove the lines.	15,900 27,220 46,780 68,690
Pipe Stock—(assessed on an individual basis)	
Pipe Stock - Exempt—Under La. Const., Art. X, §4 (19-C)	
Production Units: Class I - per unit—separator & 1 heater—500 MCF/D Class II - per unit—separator & 1 heater—750 MCF/D	20,130 26,820
Production Process Units—These units are by specific design and not in the same category as gas compressors, liquid and gas production units or pump-motor units. (Assessed on an individual basis.)	
Pumps—In Line per horsepower rating of motor	290
Pump-Motor Unit—pump and motor only Class I - (water flood, s/w disposal, p/l, etc.) Up to 300 HP - per HP of motor Class II - (high pressure injection, etc.) 301 HP and up per HP of motor	340 400
Pumping Units-Conventional and Beam Balance—(unit value includes motor) - assessed according to API designation. 16 D 25 D 40 D 57 D 80 D 114 D 160 D 228 D 320 D 456 D 640 D 912 D NOTE: For "Air Balance" and "Heavy Duty" units, multiply the above values by 1.30.	6,580 12,350 15,440 20,590 34,370 35,750 48,100 52,220 66,000 78,350 94,880 100,370
Regenerators (Accumulator)—(see Metering Equipment)	
Regulators: per unit	2,630
Safety Systems Onshore And Marsh Area Basic Case: well only well & production equipment with surface op. ssv, add Offshore 0 - 3 Miles Wellhead safety system (excludes wellhead actuators) per well production train glycol dehydration system P/L pumps and LACT Compressors Wellhead Actuators (does not include price of the valve) 5,000 psi 10,000 psi and over NOTE: For installation costs - add 25%	5,260 6,060 9,090 15,160 37,920 22,760 53,080 33,340 3,770 5,660
Sampler—(see Metering Equipment—"Fluid Meters")	
Scrubbers—Two Classes Class I - Manufactured for use with other major equipment and, at times, included with such equipment as part of a package unit. 8 In. Diameter Vessel 10 In. Diameter Vessel 12 In. Diameter Vessel Class II - Small "in-line" scrubber used in flow system	3,200 4,580 5,200 1,490 1,940

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
usually direct from gas well. Much of this type is "shop-made" and not considered as major scrubbing equipment. 8 In. Diameter Vessel 12 In. Diameter Vessel NOTE: No metering or regulating equipment included in the above.	
Separators—(no metering equipment included) Horizontal—Filter /1,440 psi (High Pressure) 6-5/8" OD x 5'-6" 8-5/8" OD x 7'-6" 10-3/4" OD x 8'-0" 12-3/4" OD x 8'-0" 16" OD x 8'-6" 20" OD x 8'-6" 20" OD x 12'-0" 24" OD x 12'-6" 30" OD x 12'-6" 36" OD x 12'-6"	4,690 5,090 7,150 9,610 15,440 22,820 24,020 32,370 47,240 56,160
Separators—(no metering equipment included) Vertical 2—Phase /125 psi (Low Pressure) 24" OD x 7'-6" 30" OD x 10'-0" 36" OD x 10'-0" Vertical 3—Phase /125 psi (Low Pressure) 24" OD x 7'-6" 24" OD x 10'-0" 30" OD x 10'-0" 36" OD x 10'-0" 42" OD x 10'-0" Horizontal 3—Phase /125 psi (Low Pressure) 24" OD x 10'-0" 30" OD x 10'-0" 36" OD x 10'-0" 42" OD x 10'-0"	5,320 5,720 11,950 5,600 6,350 8,810 12,530 14,530 8,290 10,640 11,610 18,530
Vertical 2—Phase /1440 psi (High Pressure) 12-3/4" OD x 5'-0" 16" OD x 5'-6" 20" OD x 7'-6" 24" OD x 7'-6" 30" OD x 10'-0" 36" OD x 10'-0" 42" OD x 10'-0" 48" OD x 10'-0" 54" OD x 10'-0" 60" OD x 10'-0" Vertical 3 - Phase /1440 psi (High Pressure) 16" OD x 7'-6" 20" OD x 7'-6" 24" OD x 7'-6" 30" OD x 10'-0" 36" OD x 10'-0" 42" OD x 10'-0" 48" OD x 10'-0" Horizontal 2—Phase /1440 psi (High Pressure) 16" OD x 7'-6" 20" OD x 7'-6" 24" OD x 10'-0" 30" OD x 10'-0" 36" OD x 10'-0" 42" OD x 15'-0" 48" OD x 15'-0"	3,150 4,690 8,920 10,810 16,470 21,330 34,140 40,260 60,970 76,240 5,490 9,610 11,150 17,220 22,020 35,500 41,640 5,380 8,640 11,780 18,130 22,990 46,670 53,820 8,290 9,270
Separators—(No metering equipment included) Horizontal 3—Phase /1440 psi (High Pressure) 16" OD x 7'-6" 20" OD x 7'-6" 24" OD x 10'-0" 30" OD x 10'-0" 36" OD x 10'-0" 36" OD x 15'-0" Offshore Horizontal 3—Phase /1440 psi (High Pressure) 30" OD x 10'-0" 36" OD x 10'-0"	13,500 19,220 27,680 30,940 39,860 38,030 55,190 57,590 89,390

Table 907.C.1 Surface Equipment	
Property Description	\$ Cost New
36" OD x 12'-0"	
36" OD x 15'-0"	
42" OD x 15'-0"	
Skimmer Tanks—(see Flow Tanks in Tanks section)	
Stabilizers—per unit	5,890
Sump/Dump Tanks—(See Metering Equipment -"Fluid Tanks")	
Tanks—no metering equipment	Per Barrel*
Flow Tanks (receiver or gunbarrel)	
50 to 548 bbl. Range (average tank size - 250 bbl.)	36.80
Stock Tanks (lease tanks)	28.60
100 to 750 bbl. Range (average tank size – 300 bbl.)	
Storage Tanks (Closed Top)	
1,000 barrel	24.40
1,500 barrel	21.50
2,000 barrel	20.90
2,001 - 5,000 barrel	19.20
5,001 - 10,000 barrel	18.10
10,001 - 15,000 barrel	16.90
15,001 - 55,000 barrel	11.80
55,001 - 150,000 barrel	8.90
Internal Floating Roof	34.80
10,000 barrel	23.60
20,000 barrel	17.50
30,000 barrel	15.60
50,000 barrel	15.00
55,000 barrel	13.30
80,000 barrel	11.60
100,000 barrel	
*I.E.: (tanks size bbls.) X (no. of bbls.) X (cost-new factor.)	
Telecommunications Equipment	
Microwave System	45,750
Telephone & data transmission	3,430
Radio telephone	9,780
Supervisory controls:	22,310
remote terminal unit, well	570
master station	50
towers (installed):	580
heavy duty, guyed, per foot	130
light duty, guyed, per foot	170
heavy duty, self supporting, per foot	60
light duty, self supporting, per foot	
equipment building, per sq. ft.	
solar panels, per sq. ft.	
Utility Compressors	
per horsepower - rated on motor	750
Vapor Recovery Unit—no Metering Equipment	
60 MCF/D or less	20,020
105 MCF/D max	28,600
250 MCF/D max	37,750
Waterknockouts—Includes unit, backpressure valve and regulator, but, no metering equipment.	5,430
2" diam. x 16'	8,120
3" diam. x 10'	11,210
4" diam. x 10'	18,360
4" diam. x 10'	21,220
6" diam. x 10'	26,590
6" diam. x 15'	30,540
8" diam. x 10'	33,860
8" diam. x 15'	37,690
8" diam. x 20'	44,320
8" diam. x 25'	
10" diam. x 20'	

Table 907.C.2 Service Stations Marketing Personal Property *Alternative Procedure	
Property Description	\$ Cost New
Air and Water Units:	
Above ground	1,280
Below ground	540

Table 907.C.2 Service Stations Marketing Personal Property *Alternative Procedure	
Property Description	\$ Cost New
Air Compressors:	
1/3 to 1 H.P.	1,720
1/2 to 5 H.P.	2,890
Car Wash Equipment:	
In Bay (roll over brushes)	46,040
In Bay (pull through)	71,470
Tunnel (40 to 50 ft.)	155,570
Tunnel (60 to 75 ft.)	208,180
Drive On Lifts:	
Single Post	8,410
Dual Post	9,470
Lights:	
Light Poles (each)	860
Lights - per pole unit	950
Pumps:	
Non-Electronic - self contained and/or remote controlled computer	3,640
Single	5,410
Dual	6,150
Computerized - non-self service, post pay, pre/post pay. self contained and/or remote controlled dispensers	8,290
Single	
Dual	
Read-Out Equipment (at operator of self service)	
Per Hose Outlet	1,350
Signs:	
Station Signs	4,060
6 ft. lighted - installed on 12 ft. pole	7,440
10 ft. lighted - installed on 16 ft. pole	3,390
Attachment Signs (for station signs)	3,470
Lighted "self-serve" (4 x 11 ft.)	12,310
Lighted "pricing" (5 x 9 ft.)	16,110
High Rise Signs - 16 ft. lighted - installed on:	18,020
1 pole	6,540
2 poles	3,470
3 poles	
Attachment Signs (for high rise signs)	
Lighted "self-serve" (5 x 17 ft.)	
Lighted "pricing" (5 x 9 ft.)	
Submerged Pumps—(used with remote control equipment, according to number used - per unit)	3,630
Tanks—(average for all tank sizes)	
Underground - per gallon	2.10

NOTE: The above represents the cost-new value of modern stations and self-service marketing equipment. Other costs associated with such equipment are included in improvements. Old style stations and equipment should be assessed on an individual basis, at the discretion of the tax assessor, when evidence is furnished to substantiate such action.

*This alternative assessment procedure should be used only when acquisition cost and age are unknown or unavailable. Otherwise, see general business section (Chapter 25) for normal assessment procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:480 (March 1998), LR 25:313 (February 1999), LR 26:507 (March 2000), LR 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:488 (March 2004), LR 31:717 (March 2005), LR 32:431 (March 2006), LR 33:492 (March 2007), LR 34:679 (April 2008), LR

35:495 (March 2009), LR 36:773 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1395 (May 2011), LR 38:803 (March 2012).

Chapter 11. Drilling Rigs and Related Equipment
§1101. Guidelines for Ascertaining the Fair Market Value of Drilling Rigs and Related Equipment

A. ...
 B. Discovery. Each assessor is to assess those drilling rigs located in his parish as of January 1, each year. Discovery of drilling rigs operating in a parish is the responsibility of the parish tax assessor. Personnel of each parish assessor's office should use a visual survey or other method to establish the name and location of drilling rigs operating in a particular parish on the first of the year. The parish assessor should then contact the drilling contractor to determine if a drilling rig is currently located on the site. The drilling contractor should then be provided a notification of the assessor's intent to assess the drilling rig and a copy of LAT Form 13. The drilling contractor should also be provided a copy of LAT Form 5 on which to record the name and address of owners of leased equipment and inventories located on the drill site such as equipment buildings, cement, etc.

C. ...
 AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 24:487 (March 1998), amended by the Division of Administration, Tax Commission, LR 38:808 (March 2012).

§1103. Drilling Rigs and Related Equipment Tables

A. Land Rigs

Table 1103.A Land Rigs		
Depth "0" to 7,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
3,000	779,600	116,900
4,000	856,600	128,500
5,000	1,128,500	169,300
6,000	1,504,400	225,700
7,000	2,105,300	315,800
Depth 8,000 to 10,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
8,000	2,763,700	414,600
9,000	3,424,000	513,600
10,000	4,042,500	606,400
Depth 11,000 to 15,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
11,000	4,587,100	688,100
12,000	5,037,300	755,600
13,000	5,384,800	807,700
14,000	5,632,600	844,900
15,000	5,795,600	869,300
Depth 16,000 to 20,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
16,000	5,900,700	885,100
17,000	5,986,200	897,900
18,000	6,102,300	915,300
19,000	6,311,000	946,700

Table 1103.A Land Rigs		
20,000	6,686,100	1,002,900
Depth 21,000 + Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
21,000	7,313,000	1,097,000
25,000 +	8,288,900	1,243,300

- 1. - 2.
- B. Jack-Ups
* * *
- C. Semisubmersible Rigs
* * *
- 1. - 3.b.i. ...
- D. Well Service Rigs Land Only

Table 1103.D Well Service Rigs Land Only				
Class	Mast	Engine	Fair Market Value (RCNLD)	Assessment
I	72' X 125M# 75' X 150M#	6V71	206,000	30,900
II	96' X 150M# 96' X 180M# 96' X 185M# 96' X 205M# 96' X 210M# 96' X 212M# 96' X 215M#	8V71	278,100	41,700
III	96' X 240M# 96' X 250M# 96' X 260M# 102' X 215M#	8V92	339,900	51,000
IV	102' X 224M# 102' X 250M# 103' X 225M# 103' X 250M# 104' X 250M# 105' X 225M# 105' X 250M#	12V71	463,500	69,500
V	105' X 280M# 106' X 250M# 108' X 250M# 108' X 260M# 108' X 268M# 108' X 270M# 108' X 300M#	12V71 12V92	535,600	80,300
VI	110' X 250M# 110' X 275M# 112' X 300M# 112' X 350M#	12V71 (2) 8V92	607,700	91,200
VII	117' X 215M#	(2) 8V92 (2) 12V71	618,000	92,700

D.1. - E.1.
 AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:939 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:487 (March 1998), LR 25:315 (February 1999), LR 26:508 (March 2000), LR 27:426 (March 2001), LR 28:519 (March 2002), LR 30:488 (March 2004), LR 31:718 (March 2005), LR 32:431 (March 2006), LR 33:493 (March 2007), LR 34:683 (April 2008), LR 35:497 (March 2009), LR 36:778 (April

2010), amended by the Division of Administration, Tax Commission, LR 37:1399 (May 2011), LR 38:808 (March 2012).

Chapter 13. Pipelines

§1307. Pipeline Transportation Tables

A. Current Costs for Other Pipelines (Onshore)

Table 1307.A Current Costs for Other Pipelines (Onshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
2	\$ 147,060	\$ 22,060
4	173,060	25,960
6	203,660	30,550
8	239,670	35,950
10	282,040	42,310
12	331,910	49,790
14	390,590	58,590
16	459,640	68,950
18	540,910	81,140
20	636,540	95,480
22	749,080	112,360
24	881,520	132,230
26	1,037,380	155,610
28	1,220,790	183,120
30	1,436,620	215,490
32	1,690,620	253,590
34	1,989,520	298,430
36	2,341,270	351,190
38	2,755,210	413,280
40	3,242,340	486,350
42	3,815,590	572,340
44	4,490,190	673,530
46	5,284,060	792,610
48	6,218,290	932,740

NOTE: Excludes river and canal crossings

B. Current Costs for Other Pipelines (Offshore)

Table 1307.B Current Costs for Other Pipelines (Offshore)		
Diameter (inches)	Cost per Mile	15% of Cost per Mile
6	\$ 894,510	\$ 134,180
8	896,450	134,470
10	905,840	135,880
12	922,660	138,400
14	946,920	142,040
16	978,620	146,790
18	1,017,760	152,660
20	1,064,340	159,650
22	1,118,360	167,750
24	1,179,810	176,970
26	1,248,700	187,310
28	1,325,030	198,750
30	1,408,800	211,320
32	1,500,010	225,000
34	1,598,660	239,800
36	1,704,740	255,710
38	1,818,270	272,740
40	1,939,230	290,880
42	2,067,630	310,140
44	2,203,470	330,520
46	2,346,750	352,010
48	2,497,460	374,620

C. Pipeline Transportation Allowance for Physical Deterioration (Depreciation)

Table 1307.C Pipeline Transportation Allowance for Physical Deterioration (Depreciation)	
Actual Age	26.5 Year Life Percent Good
1	98
2	96
3	94
4	91
5	88
6	86
7	83
8	80
9	77
10	73
11	70
12	67
13	63
14	60
15	56
16	52
17	48
18	44
19	39
20	35
21	33
22	30
23	28
24	26
25	25
26	23
27 and older	20 *

* Reflects residual or floor rate.

NOTE: See §1305.G (page PL-3) for method of recognizing economic obsolescence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:941 (November 1984), LR 12:36 (January 1986), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 24:489 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:426 (March 2001), LR 31:719 (March 2005), LR 32:432 (March 2006), LR 33:494 (March 2007), LR 34:684 (April 2008), LR 35:499 (March 2009), LR 36:778 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:809 (March 2012).

Chapter 15. Aircraft

§1503. Aircraft (Including Helicopters) Table

A. Aircraft (Including Helicopters)

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2011	0.982	1	97	.95
2010	1.013	2	93	.94
2009	1.006	3	90	.91
2008	1.035	4	86	.89

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (20 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2007	1.075	5	82	.88
2006	1.134	6	78	.88
2005	1.187	7	74	.88
2004	1.276	8	70	.87
2003	1.320	9	65	.86
2002	1.342	10	60	.81
2001	1.351	11	55	.74
2000	1.362	12	50	.68
1999	1.387	13	45	.62
1998	1.391	14	40	.56
1997	1.403	15	35	.49
1996	1.425	16	31	.44
1995	1.447	17	27	.39
1994	1.499	18	24	.36
1993	1.541	19	22	.34
1992	1.571	20	21	.33
1991	1.590	21	20	.32

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:943 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:206 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:495 (March 2007), LR 34:685 (April 2008), LR 35:499 (March 2009), LR 36:779 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1401 (May 2011), LR 38:809 (March 2012).

Chapter 25. General Business Assets

§2503. Tables Ascertain Economic Lives, Percent Good and Composite Multipliers of Business and Industrial Personal Property

A. Suggested Guideline For Ascertain Economic Lives of Business and Industrial Personal Property. The following alphabetical list includes most of the principal activities and types of machinery and equipment used in business throughout this state. The years shown represent an estimate of the average economic life of the equipment as experienced by the particular business or industry. The actual economic life of the assets of the business under appraisal may be more or less than the guidelines shown. The assessor must use his best judgment in consultation with the property owner in establishing the economic life of the property under appraisal.

1. Suggested Guidelines for Ascertain Economic Lives of Business and Industrial Personal Property

Table 2503.A Business Activity/Type of Equipment	Average Economic Life in Years
Agricultural Machinery and Equipment	10
Feed Mill Equipment (Production Line)	20
Air Conditioning and Heat Repair	10

Table 2503.A Business Activity/Type of Equipment	Average Economic Life in Years
***	***
Cellular/PCS	
Antennas	5
Cellular/PCS Telephone Handsets	3
Electronics	5
Leasehold Improvements	15
Power and Batteries	5
Software	3
Switching	5
Towers—Cellular/PCS and Microwave	20
Transmission	5
Cement, Clay and Brick Prods. Mfg. M and E	20
***	***
*If acquisition cost and age of service station equipment are not available, see Chapter 9, Table 907.B-2 for alternative assessment procedure.	

B. Cost Indices

Table 2503.B Cost Indices			
Year	Age	National Average 1926 = 100	January 1, 2011 = 100*
2011	1	1503.2	0.982
2010	2	1457.4	1.013
2009	3	1468.6	1.006
2008	4	1427.3	1.035
2007	5	1373.3	1.075
2006	6	1302.3	1.134
2005	7	1244.5	1.187
2004	8	1157.3	1.276
2003	9	1118.6	1.320
2002	10	1100.0	1.342
2001	11	1093.4	1.351
2000	12	1084.3	1.362
1999	13	1065.0	1.387
1998	14	1061.8	1.391
1997	15	1052.7	1.403
1996	16	1036.0	1.425
1995	17	1020.4	1.447
1994	18	985.0	1.499
1993	19	958.0	1.541
1992	20	939.8	1.571
1991	21	928.5	1.590
1990	22	910.2	1.622
1989	23	886.5	1.666
1988	24	841.4	1.755
1987	25	806.9	1.830
1986	26	795.4	1.857

*Reappraisal Date: January 1, 2011 – 1476.7 (Base Year)

C. ...

D. Composite Multipliers 2012 (2013 Orleans Parish)

Table 2503.D Composite Multipliers 2012 (2013 Orleans Parish)									
Age	3 Yr	5 Yr	6 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr
1	.69	.83	.85	.88	.90	.92	.93	.95	.96
2	.50	.70	.74	.80	.85	.88	.91	.94	.96
3	.34	.52	.57	.67	.76	.80	.86	.91	.94
4	.17	.35	.42	.56	.69	.76	.82	.89	.93
5		.25	.32	.46	.62	.71	.78	.88	.92
6		.20	.22	.37	.56	.66	.77	.88	.91
7			.21	.31	.46	.59	.74	.88	.90

Age	3 Yr	5 Yr	6 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr
8				.28	.38	.55	.70	.87	.89
9				.26	.32	.48	.65	.86	.89
10					.28	.39	.58	.81	.89
11					.27	.32	.50	.74	.89
12						.30	.42	.68	.87
13						.28	.36	.62	.83
14							.32	.56	.78
15							.29	.49	.73
16							.29	.44	.68
17								.39	.64
18								.36	.58
19								.34	.52
20								.33	.47
21								.32	.45
22									.42
23									.40
24									.35
25									.34
26									.34

1. Data sources for tables are:
 - a. cost index—Marshall and Swift Publication Co.;
 - b. percent good—Marshall and Swift Publication Co.;
 - c. average economic life—various.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 10:944 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:207 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:317 (February 1999), LR 26:509 (March 2000), LR 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004), LR 31:719 (March 2005), LR 32:433 (March 2006), LR 33:496 (March 2007), LR 34:686 (April 2008), LR 35:500 (March 2009), LR 36:780 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1402 (May 2011), LR 38:810 (March 2012).

Chapter 27. Guidelines for Application, Classification and Assessment of Land Eligible to be Assessed at Use Value

§2713. Assessment of Timberland

A. - D. ...

E. Gross Returns of Timberland. The gross value per cubic foot of timber production is hereby established to be \$0.66/cubic/foot.

F. Capitalization Rate for Timberland. The capitalization rate for determining use value of timberlands is hereby established to be as follows.

Timberland	Class 1, 2, and 3	Class 4
Risk Rate	2.30%	5.30%
Illiquidity Rate	-0.09%	0.85%
Safe Rate	4.16%	5.16%
Other Factors	3.63%	4.69%
Capitalization Rate	10.00%	16.00%

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 14:872 (December 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 26:511 (March 2000), LR 30:492 (March 2004), amended by the Division of Administration, Tax Commission, LR 38:811 (March 2012).

§2717. Tables—Use Value

A. ...

B. Average Assessed Value per Acre of Timberland, by Class

Class	Assessed Value Per Acre
Class 1	\$38.67
Class 2	\$27.47
Class 3	\$12.05
Class 4	\$ 7.53

1. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 13:764 (December 1987), LR 14:110 (February 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:491 (March 1998), LR 26:511 (March 2000), LR 30:492 (March 2004), amended by the Division of Administration, Tax Commission, LR 38:811 (March 2012).

Chapter 31. Public Exposure of Assessments; Appeals §3101. Public Exposure of Assessments, Appeals to the Board of Review and Board of Review Hearings

A. Assessment lists shall be open for public inspection each year for a period of 15 days, beginning no earlier than August 15 and ending no later than September 15, except in Jefferson Parish, where the lists shall be open for public inspection no earlier than August 1 and ending no later than September 15 and in Orleans Parish, where the lists shall be open for public inspection August 1-August 15.

B.1. - K. ...

AUTHORITY NOTE: Promulgated in accordance with LSA-Constitution of 1974, Article VII, §18, R.S. 47:2302, R.S. 47:2303 and R.S. 47:2304.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:289 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), LR 15:1097 (December 1989), LR 19:212 (February 1993), amended by the Department of Revenue, Tax Commission, LR 25:319 (February 1999), LR 26:512 (March 2000), LR 30:492 (March 2004), LR 32:435 (March 2006), LR 33:498 (March 2007), LR 34:688 (April 2008), LR 35:501 (March 2009), LR 36:781 (April 2010), amended by the Division of Administration, Tax Commission, LR 37:1403 (May 2011), LR 38:811 (March 2012).

§3103. Appeals to the Louisiana Tax Commission

A. - L. ...

M. The hearing shall be conducted informally. It will be the responsibility of the taxpayer or assessor to retain the services of an official reporter for a scheduled hearing should either anticipate the need for a transcript. The Tax Commission shall be notified within three business days, prior to the scheduled hearing that an official reporter will be in attendance.

N. - X. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837, R.S. 47:1989 and R.S. 47:1992.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 24:492 (March 1998), LR 25:319 (February 1999), LR 26:512 (March 2000), LR 28:521 (March 2002), LR 31:721 (March 2005), LR 32:436 (March 2006), LR 33:498 (March 2007), LR 34:688 (April 2008), LR 36:782 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:811 (March 2012).

§3105. Practice and Procedure for Public Service Properties Hearings

A. The Tax Commission or its designated representative, as provided by law, shall conduct hearings to consider the written protest of an appellant taxpayer. The appeal shall be filed within 30 days after receipt of the Public Service Section's certificate of value. In order to institute a proceeding before the commission, the taxpayer shall file Form 3105.A and, if applicable Form 3103.B.

B.1. - S. ...

LTC Docket No. _____
Form 3105.A La. Tax Commission
Exhibit A P.O. Box 66788
Appeal to Louisiana Tax Commission Baton Rouge, LA 70896
by Taxpayer (225) 925-7830

Taxpayer Name: _____
Address: _____
City, State, Zip: _____

Circle one Industry:

Airline Boat/Barge Co-op Electric Pipeline Railcar Railroad Telephone

The Fair Market Value as determined by the Public Service Section of the Louisiana Tax Commission is:

Total \$ _____

I am requesting that the Fair Market Value be fixed at:

Total \$ _____

I understand that property is assessed at a percentage of fair market value which means the price for the property which would be agreed upon between a willing and informed buyer and a willing and informed seller under usual and ordinary circumstances, the highest price the property would bring on the open market if exposed for sale for a reasonable time.

Appellant
Address: _____

Telephone No.: _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:1856.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 23:209 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:493 (March 1998), LR 25:320 (February 1999), LR 26:513 (March 2000), LR 30:492 (March 2004), LR 31:723 (March 2005), LR 32:438 (March 2006), LR 33:499 (March 2007), LR 34:689 (April 2008), LR 36:782 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:812 (March 2012).

§3106. Practice and Procedure for the Appeal of Bank Assessments

A. - L.

M. The hearing shall be conducted informally. It will be the responsibility of the taxpayer or assessor to retain the services of an official reporter for a scheduled hearing should either anticipate the need for a transcript. The Tax Commission shall be notified within three business days, prior to the scheduled hearing that an official reporter will be in attendance.

N. - T. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 33:499 (March 2007), amended LR 34:690 (April 2008), LR 36:782 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:812 (March 2012).

§3107. Practice and Procedure for the Appeal of Insurance Credit Assessments

A. - L. ...

M. The hearing shall be conducted informally. It will be the responsibility of the taxpayer or assessor to retain the services of an official reporter for a scheduled hearing should either anticipate the need for a transcript. The Tax Commission shall be notified within three business days, prior to the scheduled hearing that an official reporter will be in attendance.

N. - T.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Commission, LR 33:501 (March 2007), amended LR 34:690 (April 2008), LR 36:782 (April 2010), amended by the Division of Administration, Tax Commission, LR 38:812 (March 2012).

James D. "Pete" Peters
Chairman

1203#013

RULE

**Office of the Governor
Licensing Board for Contractors**

Home Improvement Registration and
New Home Warranty Act
(LAC 46:XXIX.1511 and 1513)

In accordance with the provisions of La. R.S. 49:950 et seq., which is the Administrative Procedure Act, and through the authority granted in R.S. 37:2150-2192, which is the Contractor Licensing Law, the Louisiana State Licensing Board for Contractors (LSLBC) adopts rules and regulations regarding contracting matters under the jurisdiction of the LSLBC.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXIX. Contractors

Chapter 15. Residential

§1511. Home Improvement Registration

A. Home improvement contractors are required to register with the board in order to perform services in an amount of \$7,500 or more, not to exceed \$75,000. Contractors who hold valid commercial or residential licenses with the board are exempt from this registration requirement. Home improvement contractors are required to submit certificates evidencing workers' compensation coverage in compliance with Title 23 of the Louisiana Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012).

§1513. New Home Warranty Act

A. Pursuant to R.S. 9:3145, a builder shall give the owner written notice of the requirements of the New Home Warranty Act.

B. Failure to provide such written notice shall be grounds for the residential subcommittee to suspend, modify, or revoke the license of the contractor who failed to provide the required notice, subject to the final approval of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2150-2192.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Licensing Board for Contractors, LR 38:813 (March 2012).

Michael McDuff
Executive Director

1203#005

RULE

**Office of the Governor
Public Defender Board**

Service Restriction Protocol
(LAC 22:XV.Chapter 17)

The Public Defender Board, a state agency within the Office of the Governor, has adopted LAC 22:XV.Chapter 17, as authorized by R.S. 15:148. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of these rules is to establish policies and procedures to ensure that district public defenders' expenditures do not exceed their revenues and that public defense service providers meet the ethical obligations imposed upon them by the Rules of Professional Conduct.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part XV. Public Defender Board

Chapter 17. Service Restriction Protocol

§1701. Purpose, Findings and Intentions

A. On May 25, 2011, the legislative auditor issued a report entitled, "Louisiana District Public Defenders Compliance with Report Requirements." The report, prepared in accordance with R.S. 24:515.1.F, focused largely upon the fact that 28 of Louisiana's 42 district public defenders had expenditures that exceeded revenues during the 18-month period beginning January 1, 2009 and ending June 30, 2010.

The report explains, at p. 6, that:

[D]uring 2008 and 2009, the Louisiana Public Defender Board ("Board") received less money than it had requested during the budgeting/appropriations process. To preserve the state's public defender system, the Board reduced, and in some cases, eliminated state funding to local public defender districts that had positive fund balances. This allowed state funding to be directed to those districts with the greatest financial need. Twelve districts were required to use their fund balances to finance operations in 2008 and 28 districts were required to do so in 2009. It was a limited solution that allowed the continuation of the public defense system during lean economic times. At the same time, this seriously depleted most of the local districts' fund balances.

1. As a result of this spending pattern, the legislative auditor recommended that the board monitor the fiscal operations and financial position of all district defenders and, further, provide guidance to district defenders to ensure that districts do not spend more money than they collect. In order to comply with the legislative auditor's recommendation to provide guidance to public defenders to ensure that districts do not spend more funds than they receive, the board adopts this service restriction protocol.

B. The board recognizes that excessive caseloads affect the quality of representation being rendered by public

defense service providers and thereby compromise the reliability of verdicts and threaten the conviction of innocent persons.

C. The board further recognizes that excessive caseloads impair the ability of public defense service providers to meet the ethical obligations imposed upon all attorneys, public and private, by the Rules of Professional Conduct. The board finds that by breaching the ethical obligations imposed by the Rules of Professional Conduct, a public defense service provider fails to satisfy the state's obligation to provide effective assistance of counsel to indigent defendants at each critical stage of the proceeding.

1. The relevant ethical obligations imposed by the Rules of Professional Conduct include, but are not limited to rules:

- a. 1.1 (requiring competent representation);
- b. 1.3 (requiring "reasonable diligence and promptness" in representation);
- c. 1.4 (requiring prompt and reasonable communications with the client);
- d. 1.7(a)(2) (a "lawyer shall not represent a client if ... there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person...");
- e. 1.16(a)(1) (requiring a lawyer to "withdraw from the representation of a client if...the representation will result in violation of the Rules of Professional Conduct or law.");
- f. 5.1(a) and (b) (imposing on a "firm" the obligation to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct" and that a "lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct"); and
- g. 6.2(a) (a "lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as ... representing the client is likely to result in violation of the Rules of Professional Conduct or other law.").

2. The board further recognizes that a district or a district defender's office may be a "firm" for the purposes of Rule of Professional Conduct 5.1(a).

D. When this protocol uses "shall" or "shall not," it is intended to impose binding obligations. When "should" or "should not" is used, the text is intended as a statement of what is or is not appropriate conduct, but not as a binding rule. When "may" is used, it denotes permissible discretion or, depending on the context, refers to action that is not prohibited specifically.

E. This protocol is intended to be read consistently with constitutional requirements, statutes, the Rules of Professional Conduct, other court rules and decisional law and in the context of all relevant circumstances.

F. This protocol is neither designed nor intended as a basis for civil liability, criminal prosecution or the judicial evaluation of any public defense service provider's alleged misconduct.

G. If any phrase, clause, sentence or provision of this protocol is declared invalid for any reason, such invalidity

does not affect the other provisions of this protocol that can be given effect without the invalid provision, and to this end, the provisions of this protocol are severable. The provisions of this protocol shall be liberally construed to effectuate the protocol's purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:813 (March 2012).

§1703. Definitions

A. As used in this protocol, unless the context clearly indicates otherwise, the following terms shall have the following meanings.

Board—the Louisiana Public Defender Board.

Board Staff—one or more members of the executive staff of the Board as set forth in R.S. 15:150 assigned by the board or the state public defender to perform the duties set forth herein.

Case—*case* as defined in R.S. 15:174.C.

Caseload—the number of cases handled by a public defender service provider. The *caseload* of a district is the sum of all public defender service providers' caseloads in that district.

District—the judicial district in which a district defender supervises service providers and enforces standards and guidelines.

District Defender—an attorney under contract with the board to supervise public defense service providers and enforce standards and guidelines within a judicial district or multiple judicial districts. Also known as a district public defender or chief indigent defender.

District Indigent Defender Fund—the fund provided for in R.S. 15:168.

Fiscal Crisis—that a district indigent defender fund is unable to support its expenditures with revenues received from all sources and any accrued fund balance. Because a district indigent defender fund may not expend amounts in excess of revenues and accrued fund balance, a district facing a fiscal crisis must restrict public defense services to cut back on or slow the growth of expenditures. Services should be restricted in the manner that the board and the affected district defender determine to be the least harmful to the continuation of public defense services within the district.

Notice—written notice given as provided for herein.:

a. between the district defender and the board or board staff. Notice between a district defender and the board or board staff, as required in this protocol, may be given by mail, facsimile transmission or electronic mail. If notice is given by certified or registered mail, notice shall be effective upon receipt by the addressee. If notice is given by mail that is not sent certified or registered, by facsimile transmission, or by electronic mail, notice shall be effective only after the sending party confirms telephonically with the receiving party that all pages, including attachments, were received by the receiving party;

b. from the district defender to the court. Notice from a district defender to the court, as required in this protocol, shall be given by filing notice with the affected district's clerks(s) of court and hand-delivering copies to the offices of the chief judge and the district attorney of the affected district.;

c. from the district defender to others. Notice from a district defender to persons not otherwise specified may be given by hand-delivery or by certified or registered mail; notice of shall be effective upon hand-delivery or deposit into the U.S. mail.

Public Defender Service Provider—an attorney who provides legal services to indigent persons in criminal proceedings in which the right to counsel attaches under the United States and Louisiana constitutions as a district employee or as an independent contractor. Unless the context or surrounding circumstances clearly indicate otherwise, a public defender service provider includes a district defender.

Rules of Professional Conduct—the Louisiana Rules of Professional Conduct.

State Public Defender—the person employed by the board pursuant to R.S. 15:152.

Workload—a public defender service provider's caseload, including appointed and other work, adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties. Non-caseload factors also include the experience level of the public defense service provider, waits in courtrooms for judicial priority afforded private-lawyer cases, training functions required of senior lawyers to junior lawyers, travel time to and from jails and prisons where clients are incarcerated, timeliness and ease of access to incarcerated clients, and the number of non-English speaking clients. A workload is excessive when it impairs the ability of a public defense service provider to meet the ethical obligations imposed by the Rules of Professional Conduct. The workload of a district is the sum of all public defender service providers' workloads in that district. The workload of a district is excessive when all non-supervisory public defense service providers within that district have excessive workloads.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:814 (March 2012).

§1705. Applicability of Sections

A. Sections 1707 through 1717 shall apply when a district is facing a fiscal crisis or excessive workload, or both. Section 1719 applies when one or more individual public defender service providers are facing excessive workloads, but the district itself is not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1707. Notice of Impending Fiscal Crisis, Excessive Caseload, or Both

A. When a district defender or board staff projects that a district will experience a fiscal crisis or an excessive workload, or both, during the next 12 months, the district defender or board staff, as the case may be, shall give notice to the other within 7 days of making such projection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1709. Discussion of Alternatives; Proposed Service Restriction Plan

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from giving or receiving of the notice specified in §1707, the following steps shall be taken.

1. Within 45 days after giving or receiving the notice, the district defender shall discuss with board staff any viable alternatives to restricting public defense services within the district.

2. If the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the district defender shall, within 60 days after either giving or receiving the notice, develop a proposed written plan for restricting services in the district, including staff and overhead reductions where necessary, and submit the proposed plan to board staff.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from giving or receiving of the notice specified in §1707, the following steps shall be taken.

1. Within 15 days after giving or receiving the notice, the district defender shall discuss with board staff any viable alternatives to restricting public defense services within the district.

2. If the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the district defender shall, within 30 days after either giving or receiving the notice, develop a proposed written plan for restricting services in the district, including staff and overhead reductions where necessary, and submit the proposed plan to board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1711. Comprehensive and Expedited Site Visits

A. If the fiscal crisis or excessive workload, or both, is/are expected to occur six or more months from the giving or receiving of the notice specified in §1707 and the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the following steps shall be taken.

1. Within 90 days of receiving the district defender's proposed service restriction plan, board staff shall conduct a comprehensive site visit. the purpose of the comprehensive site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting comprehensive site visits, board staff should perform any and all such actions that board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing district employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the board staff determines that services should be

restricted in the district following completion of the comprehensive site visit, the district defender and board staff should consult with the chief judge and district attorney before finalizing the service restriction plan.

B. If the fiscal crisis or excessive workload, or both, is/are expected to occur less than six months from the giving or receiving of the notice specified in §1707 and the district defender and board staff are unable to agree upon any viable alternatives to restricting public defense services with the district, the following steps should be taken.

1. Within 45 days of receipt of the district defender's proposed service restriction plan, board staff should conduct an expedited site visit. The purpose of the expedited site visit is to confirm that a restriction of services is necessary and to ensure that the restriction of services is handled in a manner that minimizes the adverse effects on the local criminal justice system, while avoiding assuming caseload and/or workload levels that threaten quality representation of clients or run counter to the Rules of Professional Conduct. In conducting expedited site visits, board staff may perform any and all such actions the board staff deems necessary, including, but not limited to, requesting and reviewing documents, examining computers and computerized information, interviewing district employees and independent contractors, and contacting other stakeholders in the local criminal justice system. If the board staff determines that services should be restricted in the district following completion of the expedited site visit, the district defender and board staff should consult with the chief judge and district attorney prior to finalizing the service restriction plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:815 (March 2012).

§1713. Factors to be Considered in Development of a Service Restriction Plan

A. Recognition of Diversity of Districts

1. Individual districts have different public defender service delivery methods, funding levels, caseloads, workloads and staff. As a result, service restriction plans should be tailored to each district. In some districts, restricting misdemeanor representation may be the appropriate step, while in others; districts may no longer be able to handle capital cases. However, to the extent possible, all service restriction plans should reflect that the district will continue representation of existing clients.

B. Non-Attorney Support Staff

1. In preparing the final service restriction plan for a district, the district defender and board staff should attempt to preserve the district's support staff to the extent possible.

C. Public Defender Service Provider Considerations

1. Public defender service providers' workloads must be controlled so that all matters can be handled competently. If workloads prevent public defender service providers' from providing competent representation to existing clients, public defender service providers must neither be allowed nor required to accept new clients.

2. Reasonable communications between public defender service providers and their clients are necessary for clients to participate effectively in their representation.

3. Loyalty and independent judgment are essential elements in public defender service providers' client

relationships. Conflicts of interest can arise from the public defender service providers' responsibilities to other clients, former clients, third persons or from the public defender service providers' own interest. Loyalty to clients is impaired when a public defender service provider cannot consider, recommend, or carry out appropriate courses of action for clients because of the public defender service providers' other responsibilities or interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1715. Declination of New Appointments; Other Relief

A. If the district defender and board staff agree that the fiscal crisis or excessive workload, or both, is imminent, the district defender and public defense service providers shall begin declining new appointments at an agreed upon time prior to breaching the Rules of Professional Conduct.

B. If the court appoints the district defender or one of the district's public defense service providers following declination of appointments as set forth in §1715.A, the district defender and the district's public defense service providers shall seek continuances in those cases where the defendant is not incarcerated. The district defender and the district's public defense service providers shall continue to provide legal services for incarcerated clients provided they may do so without breaching the Rules of Professional Conduct and after considering the severity of the offense and the length of time the defendant has been in custody. If the district defender determines that litigation pursuant to State v. Peart, 621 So.2d 780 (La. 1993); State v. Citizen, 04-KA-1841 (La. 4/1/05), 898 So.2d 325 or other related litigation is necessary at this time, the district defender is authorized to take such action after giving notice to the board and board staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1717. Finalization of Plan; Dissemination

A. If the fiscal crisis or excessive workload, or both, remains imminent at conclusion of the board staff's site visit, the district defender shall, within 30 days of conclusion of the site visit, submit his or her proposed written final service restriction plan to board staff.

B. Board staff shall have seven days after receipt of the proposed final service restriction plan to review and approve the plan as submitted or approve the plan as modified by board staff. The plan becomes final upon the district defender's receipt of the board staff's approval. If board staff takes no action on the proposed final services restriction plan, the plan is deemed to be approved as submitted on the first business day following the expiration of the seventh day.

C. After the plan has been approved by board staff, the district defender shall give notice of the plan, together with a copy of the plan, to the court in accordance with §1703.A.9.b. and to the state public defender in accordance with §1703.A.9.a.

D. Copies of the notice and the final service restriction plan also shall be sent by the district defender to the chief justice of the Louisiana Supreme Court, the president of the Louisiana State Bar Association, the chief and/or

administrative judge of each court in the district in which public defender service providers deliver legal services to indigent persons in criminal proceedings, and the sheriff and parish president or equivalent head of parish government for each parish in the district in accordance with §1703.A.9.c.

E. The district defender may seek assistance from the court, where appropriate, in recruiting members of the local private bar to assist in the provision of indigent representation.

F. Notices under this §1717 shall include the effective date of the service restriction and should be provided as soon as practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:816 (March 2012).

§1719. Excessive Workloads of Individual Public Defender Service Providers

A. A public defender service provider's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or result in the breach of ethical obligations, and public defense service providers are obligated to decline appointments above such levels.

B. If the district defender becomes aware that one or more of the district's public defender service providers' workloads are, or will become, excessive, the district defender shall take appropriate action. Appropriate action includes, but is not limited to, transferring non-representational responsibilities within the district, including managerial or supervisory responsibilities to others; transferring cases from one public defender service providers to another; or authorizing the public defender service providers to refuse new cases.

C. If a public defense service provider believes that he or she has an excessive workload, the public defense service provider shall consult with his or her supervisor and seek a solution by transferring cases to a public defense service provider whose workload is not excessive or by transferring non-representational responsibilities. Should the supervisor disagree with the public defense service provider's position or refuse to acknowledge the problem, the public defense service provider should continue to advance up the chain of command within the district until either relief is obtained or the public defense service provider has reached and requested assistance or relief from the district defender. If after appealing to his or her supervisor and district defender without relief, the public defense service provider should appeal to the regional director, if applicable, and the state public defender for assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 38:817 (March 2012).

Jean M. Faria
State Public Defender

1203#010

RULE

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

**Continuing Education Requirements
(LAC 46:XXXIII.1611 and 1615)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health and Hospitals, Board of Dentistry has amended LAC 46:XXXIII.1611 and 1615. No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXIII. Dental Health Profession

Chapter 16. Continuing Education Requirements

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

A. - I. ...

J. In order to renew permits for the administration of deep sedation, parenteral sedation, and enteral sedation, each licensee shall complete a board approved course pertinent to the level of their sedation permit no less than once every six years.

J.1. - L. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:244 (February 2006), LR 35:1237 (July 2009), LR 36:2038 (September 2010), LR 37:2151 (July 2011), LR 38:817 (March 2012).

§1615. Approved Courses

A. Courses sponsored or approved by the following organizations shall be accepted by the board:

1. - 8. ...

9. the American Red Cross as a provider of the cardiopulmonary resuscitation course "Red Cross Professional Rescue Course;"

10. the Accreditation Council for Continuing Medical Education (ACCME).

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:662 (June 1994), amended LR 22:24 (January 1996), LR 24:1118 (June 1998), LR 35:1238 (July 2009), LR 38:817 (March 2012).

Peyton Burkhalter
Executive Director

1203#043

RULE

Department of Health and Hospitals Board of Nursing

Denial or Delay of Licensure (LAC 46:XLVII.3331)

The Louisiana State Board of Nursing has amended LAC 46:XLVII.3331, Denial or Delay of Licensure, Licensure by Endorsement, Reinstatement, or the Right to Practice Nursing as a Student Nurse, in accordance with R.S. 37:918, R.S. 37:919 and R.S. 37:920 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The amendment to LAC 46:XLVII.3331 expands grounds for denial or delay of licensure, reinstatement, or the right to practice as a student nurse. Current rules only provide grounds for denial based on a crime of violence and crimes involving the distribution of drugs. This Rule denies applicants based on crimes of violence, sex offenses, crimes involving the distribution of drugs with the addition of drug crimes involving manufacture and production of drugs. This Rule would also deny applicants convicted of certain felony property crimes.

The Rule includes grounds for denial for a minimum of five years following the final disposition of the criminal case for any other felonies or for two or more misdemeanor crimes which reflect an inability to practice nursing safely. Additionally, applicants will be denied for a minimum of five years following a misdemeanor conviction and the existence of aggravating circumstances including but not limited to ongoing substance abuse.

Finally, the grounds for delay of an applicant has been increased to include recent diagnosis or treatment for substance use disorders.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLVII. Nurses: Practical Nurses and Registered Nurses

Subpart 2. Registered Nurses

Chapter 33. General

Subchapter C. Registration and Registered Nurse Licensure

§3331. Denial or Delay of Licensure, Licensure by Endorsement, Reinstatement, or the Right to Practice Nursing as a Student Nurse

A. Denial of Licensure, Licensure by Endorsement, Reinstatement, or the Right to Practice Nursing as a Student Nurse

1. Applicants for licensure, licensure by endorsement, 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 has pled guilty, nolo contendere, or "best interest of" to, or the equivalent thereto in jurisdictions other than Louisiana, or has been convicted of committing, attempting to commit, or conspiring to commit:

a. a *crime of violence* as defined in R.S. 14:2 or any of the following crimes:

- i. R.S. 14:32.6, first degree feticide;
- ii. R.S. 14:37, second degree feticide;

iii. R.S. 14:46.1, false-imprisonment-offender armed with a dangerous weapon;

iv. R.S. 14:93.2.3, second degree cruelty to juveniles;

v. R.S. 14:93.3, cruelty to the infirmed;

vi. R.S. 14:102, cruelty to animals; or

vii. an equivalent crime in jurisdictions other than Louisiana; or

b. a crime involving the production, manufacturing, distribution or dispensing of a controlled dangerous substance as provided for and defined in R.S. 40:961 through 40:995, otherwise referred to as the Uniform Controlled Dangerous Substances Law, or an equivalent crime in jurisdictions other than Louisiana; or

c. a crime designated as a "sex offense," "aggravated offense," or "sexual offense against a victim who is a minor" as set forth in R.S. 15:540 et seq.; or an equivalent crime in jurisdictions other than Louisiana; or

d. any of the following misappropriation crimes:

i. R.S. 14:67.3, unauthorized use of "access card;"

ii. R.S. 14:67.11, credit card fraud;

iii. R.S. 14:67.16, identity theft;

iv. R.S. 14:67.21, theft of assets of an aged person or disabled person;

v. R.S. 14:67.22, fraudulent acquisition of a credit card;

vi. R.S. 14:68.2, unauthorized use of food stamps;

vii. R.S. 14:70.1, Medicaid fraud;

viii. R.S. 14:70.4, access device fraud;

ix. R.S. 14:71.1, bank fraud; or

x. an equivalent crime in jurisdictions other than Louisiana.

2. For purposes of this Section, a pardon, suspension of imposition of sentence, expungement, or similar action shall not negate or diminish the applicability of this Section.

3. Applicants who are denied licensure, licensure by endorsement, reinstatement, or the right to practice nursing as a student nurse pursuant to this Section shall not be eligible to submit a new application.

4. These provisions of this Section shall not apply to the reinstatement of a license that has been suspended or surrendered as a result of disciplinary action taken against a licensee by the board or which reinstatement would otherwise be subject to the provisions of LAC 46:XLVII.3415.

B. Denial of Licensure, Reinstatement, or the Right to Practice Nursing as a Student Nurse for a Minimum of Five Years

1. Applicants for licensure, licensure by endorsement, 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 for a minimum of five years, if the applicant has pled guilty, nolo contendere, or "best interest of" to, or the equivalent thereto in jurisdictions other than Louisiana, or has been convicted of committing, attempting to commit, or conspiring to commit:

a. a felonious crime which reflects an inability to practice nursing safely with due regard for the health and safety of clients or patients not previously mentioned or

related to the aforementioned Paragraph A.1-A.1.d of this Section;

b. two or more misdemeanor crimes which reflect an inability to practice nursing safely with due regard for the health and safety of clients or patients, including but not limited to:

- i. R.S. 14: 35, simple battery;
- ii. R.S. 14:37, aggravated assault;
- iii. R.S. 14: 43, sexual battery;
- iv. R.S. 14:59, criminal mischief;
- v. R.S. 14:63.3, entry on or remaining in places

after being forbidden;

- vi. R.S. 14:83, soliciting for prostitutes; or
- vii. any crimes related to alcohol or drugs;

c. a misdemeanor crime which reflects an inability to practice nursing safely with due regard for the health and safety of clients or patients where there also exist aggravating circumstances, including but not limited to ongoing substance abuse, discovered as part of the investigation.

2. Applicants who are denied licensure, licensure by endorsement, reinstatement, or the right to practice nursing as a student nurse as set forth in Paragraph B.1 of this Section shall not be eligible to submit a new application until the following conditions are met:

a. the applicant presents evidence that i) five years have elapsed since the final disposition of the criminal case involving applicant including, if applicable, the completion of all court ordered probation and/or parole; community supervision, restitution; and ii) that the applicant can practice nursing safely. The evidence may include, but not be limited to, certified court documents, comprehensive evaluations by board approved evaluators, employer references, and other evidence of rehabilitation. Prior to requesting a board hearing, all evidence that applicant desires to be considered shall be presented to board staff; and

b. a hearing or conference is held before the board or board staff 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 the evidence presented and determine whether a new application can be submitted and considered without being subject to the mandatory delay provisions of Paragraph B.1 of this Section when no new grounds for such delay exist.

C. Delay of Licensure, Licensure by Endorsement, Reinstatement, or the Right to Practice Nursing as a Student Nurse

1. Applicants for licensure, licensure by endorsement, 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 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 one that involves drug possession, use, production, manufacturing, distribution or dispensing; or

b. has any pending disciplinary action or any restrictions of any form by any licensing/certifying board in any state; or

c. has pled guilty, nolo contendere, "best interest of" to, or the equivalent thereto in jurisdictions other than Louisiana, or has been convicted of committing, attempting to commit, or conspiring to commit, or allowed to participate in a pretrial diversion program in lieu of prosecution for, a crime that does not constitute grounds for denial but that reflects the inability of the person to practice nursing safely, and the conditions of the court or the pretrial diversion program have not been met, or is currently serving a court ordered probation or parole; or

d. has been diagnosed with or treated for a physical or mental infirmity that interferes with or affects the ability of the person to practice nursing safely;

e. has been diagnosed with or treated for substance dependence or substance use disorders.

2. Applicants who are delayed licensure, licensure by endorsement, 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. if delay is based on the existence of a pending criminal charge, applicant must present evidence that the charge has been dismissed including, but not limited to, documents indicating that the dismissal was predicated on completion of pretrial diversion program or completion of conditions imposed for consideration of suspension of sentence under C.Cr.P. Article 893 or 894 or their equivalent in jurisdictions other than Louisiana; or

i. if the charge results in a felony conviction, other than for the commission of a crime that would constitute grounds for denial of the application, applicant must present evidence that five years have elapsed since the final disposition of the criminal case involving applicant including, if applicable, the completion of all court ordered probation and/or parole;

ii. if the charge results in a misdemeanor conviction, other than for the commission of a crime that would constitute grounds for denial of the application, applicant must present evidence of the final disposition of the criminal case including, if applicable, the completion of all court ordered probation and/or parole;

b. if delay is based on pending disciplinary action, applicant must present evidence of unencumbered license(s) or certification from all affected jurisdictions that the matter has been satisfactorily resolved; or

c. if delay is based on the existence of a physical or mental infirmity, applicant must present comprehensive psychological, psychiatric, chemical dependency and/or other appropriate medical evaluations completed with Board approved evaluators, which may include, but not be limited to, forensic evaluations with polygraph examination, that evidence the ability of the applicant to practice nursing safely;

d. if delay is based on the existence of a substance use disorder or dependency and/or treatment for dependency, applicant must demonstrate a minimum of two years of documented sobriety and successful completion of all treatment recommendations;

e. a hearing or conference is held before the board to review the evidence, to afford applicant the opportunity to prove that the cause for the delay no longer exists, and to provide an opportunity for the board to evaluate the evidence presented and determine whether a new application can be

submitted and considered without being subject to the mandatory delay provisions of Paragraph B.1 of this Section when no new grounds for such delay exist.

3. The provisions of this Section shall not apply to the reinstatement of a license that has been suspended or surrendered as a result of disciplinary action taken against a licensee by the board or which reinstatement would otherwise be subject to the provisions of LAC 46:XLVII.3415.

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), repromulgated LR 24:1293 (July 1998), amended LR 27:202 (February 2001), LR 38:818 (March 2012).

Barbara L. Morvant, MN, RN
Executive Director

1203#082

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Greater New Orleans Community
Health Connection Waiver
(LAC 50:XXII.Chapters 61-69)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:XXII.Chapters 61-69 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 7. Greater New Orleans Community Health Connection Waiver

Chapter 61. General Provisions

§6101. Purpose

A. The Department of Health and Hospitals, Bureau of Health Services Financing hereby implements a Section 1115 demonstration waiver called the Greater New Orleans Community Health Connection (GNOCHC) Waiver to provide primary and behavioral health care services to eligible uninsured residents in the greater New Orleans area.

B. The intent of the GNOCHC Waiver is to preserve primary and behavioral health care access that was restored and expanded in the greater New Orleans area with Primary Care Access and Stabilization Grant (PCASG) funds awarded by CMS after Hurricane Katrina. Implementation of this waiver program is expected to reduce reliance on costlier emergency room services to meet primary care needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:820 (March 2012).

§6103. Program Design

A. The GNOCHC Waiver is designed to transition the PCASG medical home model to a financially sustainable model utilizing other funding resources over the long-term.

B. The waiver is a 39 month demonstration project which shall be implemented in two primary phases which span four fiscal years.

C. Phase one of the GNOCHC Waiver shall focus on preserving access to primary care services and developing a CMS approved plan for transitioning the funding of the demonstration project to long-term revenue sources. Phase two will focus on implementing the transition plan, assessment, and the demonstration project phase-down.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:820 (March 2012).

Chapter 63. Eligibility

§6301. General Provisions

A. The targeted population for GNOCHC Waiver services shall be uninsured adults who live in the greater New Orleans area. For purposes of these provisions, the greater New Orleans area shall consist of the following parishes:

1. Jefferson;
2. Orleans;
3. Plaquemines; and
4. St. Bernard.

B. All applicants shall be pre-screened to determine possible eligibility for coverage in other Medicaid or Children's Health Insurance Programs (CHIP) prior to determining eligibility for GNOCHC Waiver services.

C. Retroactive coverage is not available in the GNOCHC Waiver program. The effective date of coverage for eligible recipients shall be the first day of the month in which the application for services was received.

D. At the department's discretion, the following measures may be taken to manage eligibility for these services to ensure that waiver expenditures do not exceed funding allocations. The department may:

1. employ a first come, first served reservation list to manage the number of applications received;
2. limit the number of applications provided to potential recipients; or
3. impose enrollment limits.

E. Waiver recipients shall undergo an eligibility redetermination at least once every 12 months. Each redetermination shall include an assessment of the individual's eligibility for coverage in other Medicaid or CHIP programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:820 (March 2012).

§6303. Recipient Qualifications

A. GNOCHC Waiver services shall be provided to individuals who:

1. have been uninsured for at least six months;
2. are not pregnant;

3. are age 19 through 64 years old;
4. are not otherwise eligible for Medicaid, CHIP or Medicare coverage, with the exception of TAKE CHARGE Family Planning Waiver participants and recipients who receive coverage through the Tuberculosis Infected Program;
5. are a resident of any one of the parishes in the greater New Orleans area as defined in §6301.A;
6. have family income up to 200 percent of the federal poverty level; and
7. meet citizenship requirements under the Deficit Reduction Act of 2008 and the Children's Health Insurance Program Reauthorization Act of 2009.

B. A waiver recipient shall be disenrolled from the program if any one of the following occurs. The recipient:

1. has family income that exceeds the income limits for the program at redetermination;
2. voluntarily withdraws from the program;
3. no longer resides in a parish within the greater New Orleans area;
4. becomes incarcerated or becomes an inpatient in an institution for mental disorders;
5. obtains health insurance coverage;
6. turns 65 years old; or
7. dies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:820 (March 2012).

Chapter 65. Services

§6501. Covered Services

A. The following services shall be available to GNOCHC Waiver recipients:

1. care coordination;
2. immunizations and influenza vaccines;
3. laboratory and radiology;
4. mental health care;
5. primary health care;
6. preventive health care;
7. substance abuse; and
8. specialty care (covered with a referral from the primary care physician).

B. Cost-sharing may be applicable to the services rendered in this waiver program. All demonstration cost-sharing shall be in compliance with federal statutes, regulations and policies. A waiver recipient's share of the cost shall be restricted to a 5 percent aggregate limit per family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:821 (March 2012).

§6503. Service Delivery

A. All of the covered services under this waiver program shall be delivered by an existing PCASG-funded provider.

B. All services shall be delivered on an outpatient basis. Reimbursement shall not be made under this waiver program for services rendered to recipients who meet inpatient status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:821 (March 2012).

Chapter 67. Provider Participation

§6701. General Provisions

A. All providers participating in the delivery of services covered under the GNOCHC Waiver shall adhere to all of the applicable federal and state regulations, policy, Rules, manuals and laws.

B. Each participating provider shall meet the following requirements. The provider shall:

1. be an existing PCASG-funded provider;
2. be operational and serving waiver recipients on October 1, 2010;
 - a. if a former PCASG provider wishes to reestablish operations as a GNOCHC participating provider after October 1, 2010, CMS approval shall be required;
3. be a public or private not-for-profit entity that meets the following conditions:
 - a. the entity must not be an individual practitioner in private solo or group practice;
 - b. the provider shall be currently licensed, if applicable;
 - c. either the provider or its licensed practitioners shall be currently enrolled in the Medicaid Program; and
 - d. all health care practitioners affiliated with the provider that provide health care treatment, behavioral health counseling, or any other type of clinical health care services to patients shall hold a current, unrestricted license to practice in the state of Louisiana within the scope of that licensure;

4. provide full disclosure of ownership and control, including but not limited to any relative contractual agreements, partnerships, etc.;

5. have a statutory, regulatory or formally established policy commitment (e.g. through corporate bylaws) to serve all people, including patients without insurance, at every income level regardless of their ability to pay for services, and be willing to accept and serve new publicly insured and uninsured individuals;

6. maintain one or more health care access points or service delivery sites for the provision of health care services which may include medical care, behavioral health care and substance abuse services, either directly on-site or through established contractual arrangements; and

7. be capable of implementing and evaluating the effectiveness of an organization-specific strategic plan to become a sustainable organizational entity by December 31, 2013 which is capable of permanently providing primary or behavioral health care services to residents in the greater New Orleans area.

a. For purposes of these provisions, a sustainable organizational entity shall be defined as an entity actively developing, implementing and evaluating the effectiveness of its organization to diversify its operating income and funding resources to include non-demonstration funding sources.

C. Participating providers shall be responsible for:

1. collection of all data on the services rendered to demonstration participants through encounter data or other methods so specified by the department; and

2. maintenance of such data at the provider level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:821 (March 2012).

§6703. Reporting Requirements

A. GNOCHC participating providers shall be required to provide a sustainability plan to the department by March 1, 2011.

B. Semi-annual progress reports on the sustainability plan shall be submitted during the second and fourth quarter of each demonstration year. The first annual report is due in the fourth quarter of the first demonstration year.

C. Participating providers shall be required to provide encounter data in the format and frequency specified by the department.

D. Participating providers shall be required to report quarterly on infrastructure investment and community care coordination payment expenditures.

E. Providers that do not comply with these reporting requirements shall not be eligible to receive payments from this demonstration program and may receive financial penalties for noncompliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:822 (March 2012).

Chapter 69. Reimbursement

§6901. General Provisions

A. Providers shall ensure that reimbursement for services covered under the GNOCHC Waiver is requested only for those individuals who meet the program criteria.

B. Federal financial participation (FFP) for this waiver program is limited to the federal share of \$30 million annually in demonstration expenditures in each of the first three years of the demonstration. In year four, FFP is limited to the federal share of \$7.5 million. Thus, the total FFP for this demonstration waiver program over all four years is limited to the federal share of \$97.5 million. Federal funding will not be available for expenditures in excess of these annual limits even when the expenditure limit was not reached in prior years.

1. These provisions do not preclude the department from including as allowable expenditures for a particular demonstration year any expenditures incurred after the end of a demonstration year for items or services furnished during that year.

C. The federal share of expenditures for payments to GNOCHC providers shall be calculated based upon the applicable federal medical assistance percentage rate for the year in which the expenditures were incurred.

D. The department may make an urgent sustainability payment to any eligible GNOCHC provider that meets the criteria of this Chapter 67 and requires financial support to maintain clinical operations while the department seeks CMS approval for the funding and reimbursement protocol for this waiver program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:822 (March 2012).

§6903. Reimbursement Methodology

A. Interim Payments

1. Interim payments may be made to eligible providers according to the following criteria.

a. For the period beginning October 1, 2010 through December 31, 2010, an eligible provider's interim payment will be a quarterly urgent sustainability payment equal to 25 percent of the provider's average annual historical grant award received under the PCASG program.

b. For the period beginning January 1, 2011 through September 30, 2011, an eligible provider's interim payment will be monthly up to one third of the quarterly urgent sustainability payment.

2. Interim payments may be reduced by the department at the request of the provider and after consideration of limitations to ensure budget neutrality and promote sustainability.

3. The amount of interim payments, including urgent sustainability payments, made to providers in the period of October 1, 2010 through September 30, 2011 will be reconciled against the actual payments that would have been made to the providers to reimburse waiver-related costs through targeted payments, incentive payments, and encounter rate payments for dates of service during the period.

a. The reconciliation shall occur simultaneously with the demonstration year end adjustments.

b. Any overpayments may be offset against a provider's payment in the quarter following the reconciliation. Any underpayments may be made in the quarter following the reconciliation, subject to any limitations necessary to maintain budget neutrality and promote sustainability.

B. Primary Care Encounter Rates. Encounter rates shall be paid on a per visit basis for primary care services. The primary care encounter rate will be a fixed amount for all providers and will not be provider-specific or vary by patient acuity or service intensity.

1. Primary care encounter rates shall be paid on a per visit basis for the following services covered under the GNOCHC Waiver:

- a. primary health care;
- b. care coordination/case management;
- c. preventive health care;
- d. specialty care;
- e. laboratory services, excluding clinical diagnostic laboratory services;
- f. radiology services, including the professional and technical components;
- f. immunizations and influenza vaccines not covered by the Vaccines for Children Program; and
- g. only the screenings for mental health disorders as a component of the primary care visit, excluding the actual behavioral health services.

NOTE: A separate fee-for-service payment will be made for vaccine administration up to the charge limit specified for the Medicaid Program. Clinical diagnostic laboratory services will be reimbursed separately in an amount equal to the current Medicare rate for each test.

2. For purposes of these provisions, a primary care encounter is defined as a visit to an eligible provider during

which the waiver participant receives covered primary care services from a licensed practitioner or a person working under the supervision of a licensed practitioner including, but not limited to a:

- a. physician;
- b. clinical nurse specialists;
- c. nurse practitioner; or
- d. physician assistant.

3. Only one primary care visit may be billed per day.

C. Basic Behavioral Health Care Encounter Rates. Encounter rates shall be paid on a per visit basis for basic behavioral health care services. The basic behavioral health care encounter rate will be a fixed amount for all providers and will not be provider-specific or vary by patient acuity or service intensity.

1. Basic behavioral health care encounter rates shall be paid on a per visit basis for the following services covered under the GNOCHC Waiver:

- a. mental health screening, assessment, and counseling;
- b. substance abuse screening, assessment, and counseling;
- c. medication management;
- d. laboratory services; and
- e. follow-up services for conditions treatable or manageable in primary care settings, excluding actual primary care services.

NOTE: Services in residential, inpatient hospital and outpatient hospital settings are not covered.

2. Behavioral health care encounter rates are designed to cover behavioral health services provided to waiver participants who:

- a. do not meet the federal definition of serious mental illness (SMI), but do meet the American Society of Addictive Medicine (ASAM) criteria; and/or
- b. have a major mental health disorder as defined by the Medicaid Program or previously had a major mental health disorder and are in need of maintenance services.

3. Only one behavioral health care visit may be billed per day. The basic behavioral health care encounter rate and the primary care encounter rate may be billed on the same day if the waiver participant receives both types of services.

D. Serious Mental Illness Behavioral Health Care Encounter Rates. Encounter rates shall be paid on a per visit basis to Jefferson Parish Human Services Authority (JPHSA) and Metropolitan Human Services District (MHSD) for SMI behavioral health care services distinct from the basic behavioral health care encounter rate. The SMI behavioral health care encounter rate will be a fixed amount for JPHSA and MHSD.

1. SMI behavioral health care encounter rates shall be paid to JPHSA and MHSD for the following behavioral health services covered under the GNOCHC Waiver:

- a. mental health screening, assessment, and counseling;
- b. substance abuse screening, assessment, and counseling;
- c. medication management; and
- d. follow-up and community support services.

NOTE: Services in residential, inpatient hospital and outpatient hospital settings are not covered.

2. For purposes of these provisions, an SMI behavioral health care encounter shall be defined as a visit to

JPHSA or MHSD during which the waiver participant receives covered mental health and/or substance abuse services from a licensed practitioner or other practitioner authorized by the department to provide services directly or under supervision to the extent permitted by the practitioner's scope of state licensure.

3. SMI behavioral health care encounter rates are designed to cover behavioral health care services provided to waiver participants who meet the federal definition of serious mental illness, including those who also have a co-occurring addictive disorder, and those who were previously identified as SMI and are in need of maintenance services.

4. Only one SMI behavioral health care visit may be billed per day. The SMI behavioral health care encounter rate and the primary care encounter rate may be billed on the same day if the waiver participant receives both types of services.

5. The sum total of payments for behavioral health care services for SMI shall not exceed 10 percent of the total computable expenditures under the demonstration.

E. Targeted Payments

1. Infrastructure Investments

a. Payments shall be made to eligible providers for infrastructure costs related to the provision of health care services. The department shall assess proposals submitted by participating providers to determine if the provider meets the department's designated criteria for the targeted infrastructure investment initiative.

b. Payments for infrastructure investments will cover expenditures to support the provider's delivery of services, billing for services, financial accountability, and encounter/quality reporting. Infrastructure payments will not cover any costs for the acquisition, construction or renovation of bricks and mortar.

c. The sum total of payments for infrastructure investments shall not exceed 10 percent of the total computable expenditures under the demonstration.

2. Community Care Coordination

a. Payments, based on limited allocations, may be made to providers for community care coordination. The department will determine the total amount available for payments for community care coordination.

b. Community care coordination payments shall be calculated using the number of uninsured adult encounters reported for the most recent 12 month period available from all participating providers. The department will allocate and pay the total amount available for payments for community care coordination among providers based on each provider's annual number of uninsured adult encounters as a proportion of the total number of uninsured adult encounters for all participating providers.

c. Community care coordination payments will be made to eligible providers in demonstration year one only.

d. The sum total of payments for community care coordination shall not exceed 10 percent of the total computable expenditures under the demonstration during demonstration year one.

F. Incentive Payments

1. Quarterly incentive payments shall be made to eligible providers that have National Committee for Quality Assurance (NCQA) Patient Centered Medical Home (PCMH) recognition.

2. For the period beginning October 1, 2010 through June 30, 2011, the amount of a provider's payment will be the product of the fixed rate assigned to the level of NCQA PCMH recognition documented for the provider on the first day of the preceding quarter and the provider's quarterly number of uninsured adult encounters for the preceding quarter.

3. After June 30, 2011, the amount of a provider's payment will be the product of the fixed rate assigned to the level of NCQA PCMH recognition documented for the provider on the first day of the preceding quarter and the provider's quarterly number of enrollee encounters for the preceding quarter.

G. Supplemental Payments. If the sum of all payments made under the demonstration for the year is less than the limit of total computable expenditures allowed under the demonstration for the year, the department will divide the remainder of total computable expenditures allowed under the demonstration for the year by the total number of primary care and behavioral health care (basic and SMI) encounters for waiver participants with dates of service during the year as reported by all eligible providers and the quotient will be considered a supplement to the primary care and behavioral health care encounter rates.

1. A supplemental payment will be made to each eligible provider and the payment amount will be the product of the supplemental rate and the number of primary care and behavioral health care encounters for waiver participants with dates of service during the year as reported by the provider.

2. Supplemental payments, if any, will be made to providers during the quarter following the end of the demonstration year.

H. Adjustments. Rates and payments may be adjusted as necessary to continue providing access to services while maintaining expenditures within budget neutrality limitations, or in conjunction with the various other payment mechanisms within the waiver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:822 (March 2012).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Bruce D. Greenstein
Secretary

1203#069

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Pre-Admission Certification
(LAC 50:V.301)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:V.301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Pre-Admission Certification

§301. General Provisions

A. - F.2. ...

a. Subsequent approved extensions may be submitted for consideration referencing customized data, southern regional and national length of stay data.

F.3. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:66 (January 2009), amended LR 38:824 (March 2012).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Bruce D. Greenstein
Secretary

1203#070

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Minimum Licensing Standards
Civil Monetary Penalty Waivers
(LAC 48:I.9741 and 9743)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.9741 and 9743 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter C. Resident Rights

§9741. Notice and Appeal Procedure

A. Unless otherwise indicated, any sanction may be administratively appealed in the manner described in the nursing home law in section 2009.11.

1. In the case of a civil monetary penalty for Class “C” violations, the facility may waive in writing the right to all administrative reconsideration and appeal rights in this §9741 within 30 days from the date of receipt of the notice imposing the civil monetary penalty. This waiver shall be forwarded to the Health Standards Section of the department on the appropriate form designated by the department.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:53 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:825 (March 2012).

§9743. Civil Money Penalties (Fines)

A. - C. ...

D. Class “C” violations are subject to a civil fine which shall not exceed \$1,000 for the first violation. A second Class “C” violation occurring within an 18 month period from the first violation shall not exceed \$2,000 per day.

1. If a facility waives its right to all administrative reconsideration and appeal rights pursuant to §9741 and in accordance with the provisions of §9741.A.1, the department shall reduce the civil monetary penalty for Class “C” violations by 50 percent, which shall be paid by the facility within 30 days of receipt of the notice imposing the civil monetary penalty.

2. If the facility does not waive its right to all administrative and appeal rights provided for in §9741, in accordance with the provisions of §9741.A.1, the department shall not reduce the civil monetary penalty for Class “C” violations by 50 percent.

3. The provisions contained in §9743.D.1-3 above shall apply to any civil monetary penalty for Class “C” violations assessed on or after promulgation of the final Rule.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:54 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:825 (March 2012).

Bruce D. Greenstein
Secretary

1203#071

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Nursing Facilities—Reimbursement Methodology
Minimum Data Set Assessments
(LAC 50:II.20001, 20007, 20013 and 20015)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:II.20001, §20007, §20013 and §20015 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20001. Definitions

[Formerly LAC 50:VII.1301]

* * *

Assessment Reference Date—the date on the minimum data set (MDS) used to determine the due date and delinquency of assessments. This date is used in the case-mix reimbursement system to determine the last assessment for each resident present in the facility and is included in the quarterly case-mix report.

* * *

Case-Mix Index—a numerical value that describes the resident’s relative resource use within the groups under the Resource Utilization Group (RUG-III) classification system, or its successor, prescribed by the department based on the resident’s MDS assessments. Two average CMIs will be determined for each facility on a quarterly basis, one using all residents (the facility average CMI) and one using only Medicaid residents (the Medicaid average CMI).

Case-Mix MDS Documentation Review (CMDR)—a review of original legal medical record documentation on a randomly selected MDS assessment sample. The original legal medical record documentation supplied by the nursing facility is to support certain reported values that resulted in a specific RUG classification. The review of the documentation provided by the nursing facility will result in the RUG classification being supported or unsupported.

* * *

Delinquent MDS Resident Assessment—an MDS assessment that is more than 121 days old, as measured by the Assessment Reference Date (ARD) field on the MDS.

* * *

Facility Cost Report Period Case-Mix Index—the average of quarterly facility-wide average case-mix indices, carried to four decimal places. The quarters used in this average will be the quarters that most closely coincide with the facility’s cost reporting period that is used to determine the medians.

This average includes any revisions made due to an on-site CMDR.

EXAMPLE: A January 1, 2011-December 31, 2011 cost report period would use the facility-wide average case-mix indices calculated for March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011.

1. Repealed.

Facility-Wide Average Case-Mix Index—the simple average, carried to four decimal places, of all resident case-mix indices based on the last day of each calendar quarter. If a facility does not have any residents as of the last day of a calendar quarter or the average resident case-mix indices appear invalid due to temporary closure or other circumstances, as determined by the department, a statewide average case-mix index using occupied and valid statewide facility case-mix indices may be used.

Final Case-Mix Index Report (FCIR)—the final report that reflects the acuity of the residents in the nursing facility on the last day of the calendar quarter, referred to as the point-in-time.

* * *

Minimum Data Set (MDS)—a core set of screening and assessment data, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long-term care facilities certified to participate in the Medicaid Program. The items in the MDS standardize communication about resident problems, strengths, and conditions within facilities, between facilities, and between facilities and outside agencies. The Louisiana system will employ the current MDS assessment required and approved by the Centers for Medicare and Medicaid Services (CMS).

MDS Supportive Documentation Guidelines—the department's publication of the minimum medical record documentation guidelines for the MDS items associated with the RUG-III or its successor classification system. These guidelines shall be maintained by the department and updated and published as necessary.

On-Site MDS Review—Repealed.

* * *

Point-in-Time—Repealed.

Preliminary Case Mix Index Report (PCIR)—the preliminary report that reflects the acuity of the residents in the nursing facility on the last day of the calendar quarter.

* * *

RUG-III Resident Classification System—the resource utilization group used to classify residents. When a resident classifies into more than one RUG-III, or its successor's group, the RUG-III or its successor's group with the greatest CMI will be utilized to calculate the facility average CMI and Medicaid average CMI.

Summary Review Results Letter—a letter sent to the nursing facility that reports the final results of the case-mix MDS documentation review and concludes the review.

1. The *summary review results letter* will be sent to the nursing facility within 10 business days after the final exit conference date.

* * *

Unsupported MDS Resident Assessment—an assessment where one or more data items that are used to classify a resident pursuant to the RUG-III, 34-group, or its successor's resident classification system is not supported

according to the MDS supporting documentation guidelines and a different RUG-III, or its successor, classification would result; therefore, the MDS assessment would be considered "unsupported."

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:825 (March 2012).

§20007. Case-Mix Index Calculation

[Formerly LAC 50:VII.1307]

A. The Resource Utilization Groups-III (RUG-III) Version 5.20, 34-group, or its successor, index maximizer model shall be used as the resident classification system to determine all case-mix indices, using data from the minimum data set (MDS) submitted by each facility. Standard Version 5.20, or its successor, case-mix indices developed by CMS shall be the basis for calculating average case-mix indices to be used to adjust the direct care cost component. Resident assessments that cannot be classified to a RUG-III group, or its successor, will be excluded from the average case-mix index calculation.

B. Effective with the January 1, 2011 rate setting, each resident in the facility, with a completed and submitted assessment, shall be assigned a RUG-III, 34-group, or its successor, on the last day of each calendar quarter. The RUG-III group, or its successor, is calculated based on the resident's most current assessment, available on the last day of each calendar quarter, and shall be translated to the appropriate case-mix index. From the individual resident case-mix indices, two average case-mix indices for each Medicaid nursing facility shall be determined four times per year based on the last day of each calendar quarter.

C. Effective with the January 1, 2011 rate setting, the facility-wide average case-mix index is the simple average, carried to four decimal places, of all resident case-mix indices. The Medicaid average case-mix index is the simple average, carried to four decimal places, of all indices for residents where Medicaid is known to be the per diem payor source on the last day of the calendar quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1792 (August 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:826 (March 2012).

§20013. Case-Mix Minimum Data Set Documentation

Reviews and Case-Mix Index Reports

[Formerly LAC 50:VII.1313]

A. The department or its contractor shall provide each nursing facility with the Preliminary Case-Mix Index Report (PCIR) by approximately the fifteenth day of the second month following the beginning of a calendar quarter. The PCIR will serve as notice of the MDS assessments transmitted and provide an opportunity for the nursing facility to correct and transmit any missing MDS assessments or tracking records or apply the CMS correction policy where applicable. The department or its contractor shall provide each nursing facility with a Final Case-Mix Index Report (FCIR) (point-in-time) utilizing MDS

assessments after allowing the facilities a reasonable amount of time to process their corrections (approximately two weeks).

1. If the department or its contractor determines that a nursing facility has delinquent MDS resident assessments, for purposes of determining both average CMIs, such assessments shall be assigned the case-mix index associated with the RUG-III group “BC1-Delinquent” or its successor. A delinquent MDS shall be assigned a CMI value equal to the lowest CMI in the RUG-III, or its successor, classification system.

B. The department or its contractor shall periodically review the MDS supporting documentation maintained by nursing facilities for all residents, regardless of payer type. Such reviews shall be conducted as frequently as deemed necessary by the department. The department shall notify facilities of the Case-Mix MDS Documentation Reviews (CMDR) not less than two business days prior to the start of the review date and a FAX, electronic mail or other form of communication will be provided to the administrator and MDS coordinator on the same date identifying possible documentation that will be required to be available at the start of the on-site CMDR.

1. The department or its contractor shall review a sample of MDS resident assessments equal to the greater of 20 percent of the occupied bed size of the facility or 10 assessments and shall include those transmitted assessments posted on the most current FCIR. The CMDR will determine the percentage of assessments in the sample that are unsupported MDS resident assessments. The department may review additional or alternative MDS assessments, if it is deemed necessary.

2. When conducting the CMDR, the department or its contractor shall consider all MDS supporting documentation that is provided by the nursing facility and is available to the RN reviewers prior to the exit conference. MDS supporting documentation that is provided by the nursing facility after the exit conference shall not be considered for the CMDR.

3. Upon request by the department or its contractor, the nursing facility shall be required to produce a computer-generated copy of the transmitted MDS assessment which shall be the basis for the CMDR.

4. After the close of the CMDR, the department or its contractor will submit its findings in a summary review results (SRR) letter to the facility within 10 business days following the exit conference.

5. The following corrective action will apply to those facilities with unsupported MDS resident assessments identified during an on-site CMDR.

a. If the percentage of unsupported assessments in the initial on-site CMDR sample is greater than 25 percent, the sample shall be expanded, and shall include the greater of 20 percent of the remaining resident assessments or 10 assessments.

b. If the percentage of unsupported MDS assessments in the total sample is equal to or less than the threshold percentage as shown in column (B) of the table in Subparagraph e below, no corrective action will be applied.

c. If the percentage of unsupported MDS assessments in the total sample is greater than the threshold percentage as shown in column (B) of the table in Subparagraph e below, the RUG-III, or its successor,

classification shall be recalculated for the unsupported MDS assessments based upon the available documentation obtained during the CMDR process. The facility’s CMI and resulting Medicaid rate shall be recalculated for the quarter in which the FCIR was used to determine the Medicaid rate. A follow-up CMDR process described in Subparagraphs d and e may be utilized at the discretion of the department.

d. Those providers exceeding the thresholds (see column (B) of the table in Subparagraph e) during the initial on-site CMDR will be given 90 days to correct their assessing and documentation processes. A follow-up CMDR may be performed at the discretion of the department at least 30 days after the facility’s 90-day correction period. The department or its contractor shall notify the facility not less than two business days prior to the start of the CMDR date. A fax, electronic mail, or other form of communication will be provided to the administrator and MDS coordinator on the same date identifying documentation that must be available at the start of the on-site CMDR.

e. After the follow-up CMDR, if the percentage of unsupported MDS assessments in the total sample is greater than the threshold percentage as shown in column (B) of the following table, the RUG-III, or its successor, classification shall be recalculated for the unsupported MDS assessments based upon the available documentation obtained during the CMDR process. The facility’s CMI and resulting Medicaid rate shall be recalculated for the quarter in which the FCIR was used to determine the Medicaid rate. In addition, facilities found to have unsupported MDS resident assessments in excess of the threshold in Column (B) of the table below may be required to enter into an MDS Documentation Improvement Plan with the Department of Health and Hospitals. Additional follow-up CMDR may be conducted at the discretion of the department.

Effective Date (A)	Threshold Percent (B)
January 1, 2003	Educational
January 1, 2004	40%
January 1, 2005	35%
January 1, 2006 and beyond	25%

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2537 (December 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:826 (March 2012).

§20015. Appeal Process

[Formerly LAC 50:VII.1315]

A. If the facility disagrees with the CMDR findings, a written request for an informal reconsideration must be submitted to the department or its contractor within 15 business days of the facility’s receipt of the CMDR findings in the SRR letter. Otherwise, the results of the CMDR findings are considered final and not subject to appeal. The department or its contractor will review the facility’s informal reconsideration request within 10 business days of receipt of the request and will send written notification of the final results of the reconsideration to the facility. No appeal of findings will be accepted until after

communication of final results of the informal reconsideration process.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2538 (December 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:827 (March 2012).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Bruce D. Greenstein
Secretary

1203#072

RULE

**Department of Natural Resources
Office of Conservation**

**Natural Gas Pipeline Safety
(LAC 43:XIII.923 and 2720)**

Editor's Note: These Sections are being repromulgated to correct codification errors. The original Rule may be viewed on pages 110-125 of the January 20, 2012 edition of the *Louisiana Register*.

The Louisiana Office of Conservation amended LAC 43:XIII.101 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, section 30:501 et seq. This Rule amends the minimum pipeline safety requirements for natural gas pipelines.

There will be negligible cost to directly affected persons or natural gas pipeline operators. Benefits will be realized by persons living and working near natural gas pipelines through safer construction and operation standards imposed by the rule amendments. Moreover, Louisiana presently receives federal funds and pipeline inspection fees to administer the Natural Gas Pipeline Safety Program. Failure to amend the Louisiana rules to make them consistent with federal regulations would cause the state to lose federal funding.

Title 43

NATURAL RESOURCES

Part XIII. Office of Conservation-Pipeline Safety

**Subpart 3. Transportation of Natural Gas or Other Gas
by Pipeline: Minimum Safety Standards**

[49 CFR Part 192]

Chapter 9. Pipe Design [Subpart C]

**§923. Design Limitations for Plastic Pipe
[49 CFR 192.123]**

A. - D. ...

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E. The design pressure for thermoplastic pipe produced after July 14, 2004 may exceed a gauge pressure of 100 psig (689 kPa) provided that: [49 CFR 192.123(e)]

1. the design pressure does not exceed 125 psig (862 kPa); [49 CFR 192.123(e)(1)]

2. the material is a PE2406 or a PE3408 as specified within ASTM D2513-99 (incorporated by reference, see §507); [49 CFR 192.123(e)(2)]

E.3. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:222 (April 1983), amended LR 10:515 (July 1984), LR 24:1308 (July 1998), LR 27:1538 (September 2001), LR 30:1231 (June 2004), LR 31:682 (March 2005), LR 33:478 (March 2007), LR 35:2804 (December 2009), LR 38:115 (January 2012), repromulgated by the Department of Natural Resources, Office of Conservation, LR 38:828 (March 2012).

**Chapter 27. Operations [Subpart L]
§2720 Alternative Maximum Allowable Operating
Pressure for Certain Steel Pipelines
[49 CFR 192.620]**

A. - A.1. ...

* * *

a. For facilities installed prior to December 22, 2008, for which §911.B, C, or D applies, use the following design factors as alternatives for the factors specified in those Subsections: §911.B-0.67 or less; 911.C and D-0.56 or less. [49 CFR 192.620(a)(1)(i)]

2. The alternative maximum allowable operating pressure is the lower of the following: [49 CFR 192.620(a)(2)]

a. the design pressure of the weakest element in the pipeline segment, determined under Chapters 9 and 11 of this Subpart; [49 CFR 192.620(a)(2)(i)]

b. the pressure obtained by dividing the pressure to which the pipeline segment was tested after construction by a factor determined in the following table: [49 CFR 192.620(a)(2)(ii)]

Class Location	Alternative Test Factor
1	1.25
2	¹ 1.50
3	1.50

¹ For Class 2 alternative maximum allowable operating pressure segments installed prior to December 22, 2008, the alternative test factor is 1.25.

B. - B.2. ...

3. A supervisory control and data acquisition system provides remote monitoring and control of the pipeline segment. The control provided must include monitoring of pressures and flows, monitoring compressor start-ups and shut-downs, and remote closure of valves per Subparagraph D.1.c of this Section; [49 CFR 192.620(b)(3)]

4. - 6. ...

7. At least 95 percent of girth welds on a segment that was constructed prior to December 22, 2008, must have been non-destructively examined in accordance with §1323.B and C. [49 CFR 192.620(b)(7)]

C. - C.4.a. ...

b. for a pipeline segment in existence prior to December 22, 2008, certify, under Paragraph C.2 of this Section, that the strength test performed under §2305 was conducted at a test pressure calculated under Subsection A of this Section, or conduct a new strength test in accordance with Subparagraph C.4.a of this Section. [49 CFR 192.620(c)(4)(ii)]

5. Comply with the additional operation and maintenance requirements described in Subsection D of this Section. [49 CFR 192.620(c)(5)]

6. If the performance of a construction task associated with implementing alternative MAOP that occurs after December 22, 2008, can affect the integrity of the pipeline segment, treat that task as a "covered task", notwithstanding the definition in §3101.B and implement the requirements of Chapter 31 as appropriate. [49 CFR 192.620(c)(6)]

C.7. - D.1.c. ...

i. ensure that the identification of high consequence areas reflects the larger potential impact circle recalculated under Clause D.1.b.i of this Section; [49 CFR 192.620(d)(3)(i)]

c.ii. - e.iii. ...

iv. use cleaning pigs and sample accumulated liquids. Use inhibitors when corrosive gas or liquids are present. [49 CFR 192.620(d)(5)(iv)]

e.v. - g.ii. ...

iii. within six months after completing the baseline internal inspection required under Subparagraph D.1.i of this Section, integrate the results of the indirect assessment required under Clause D.1.g.i of this Section with the results of the baseline internal inspection and take any needed remedial actions; [49 CFR 192.620(d)(7)(iii)]

iv. for all pipeline segments in high consequence areas, perform periodic assessments as follows: [49 CFR 192.620(d)(7)(iv)]

(a). conduct periodic close interval surveys with current interrupted to confirm voltage drops in association with periodic assessments under Chapter 33 of this Subpart: [49 CFR 192.620(d)(7)(iv)(A)]

(b). locate pipe-to-soil test stations at half-mile intervals within each high consequence area ensuring at least one station is within each high consequence area, if practicable; [49 CFR 192.620(d)(7)(iv)(B)]

(c). integrate the results with those of the baseline and periodic assessments for integrity done under Subparagraphs D.1.i and D.1.j of this Section; [49 CFR 192.620(d)(7)(iv)(C)]

h. controlling external corrosion through cathodic protection: [49 CFR 192.620(d)(8)]

i. if an annual test station reading indicates cathodic protection below the level of protection required in Chapter 21 of this Subpart, complete remedial action within six months of the failed reading or notify each PHMSA pipeline safety regional office where the pipeline is in service demonstrating that the integrity of the pipeline is not compromised if the repair takes longer than 6 months. An operator must also notify a state pipeline safety authority when the pipeline is located in a state where PHMSA has an interstate agent agreement, or an intrastate pipeline is regulated by that state; and [49 CFR 192.620(d)(8)(i)]

ii. after remedial action to address a failed reading, confirm restoration of adequate corrosion control by a close interval survey on either side of the affected test station to the next test station unless the reason for the failed reading is determined to be a rectifier connection or power input problem that can be remediated and otherwise verified; [49 CFR 192.620(d)(8)(ii)]

iii. if the pipeline segment has been in operation, the cathodic protection system on the pipeline segment must have been operational within 12 months of the completion of construction; [49 CFR 192.620(d)(8)(iii)]

i. conducting a baseline assessment of integrity; [49 CFR 192.620(d)(9)]

i. except as provided in Clause D.1.i.iii of this Section, for a new pipeline segment operating at the new alternative maximum allowable operating pressure, perform a baseline internal inspection of the entire pipeline segment as follows: [49 CFR 192.620(d)(9)(i)]

(a). assess using a geometry tool after the initial hydrostatic test and backfill and within six months after placing the new pipeline segment in service; and [49 CFR 192.620(d)(9)(i)(A)]

(b). assess using a high resolution magnetic flux tool within three years after placing the new pipeline segment in service at the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(9)(i)(B)]

ii. except as provided in Clause D.1.i.iii of this Section, for an existing pipeline segment, perform a baseline internal assessment using a geometry tool and a high resolution magnetic flux tool before, but within two years prior to, raising pressure to the alternative maximum allowable operating pressure as allowed under this Section; [49 CFR 192.620(d)(9)(ii)]

iii. if headers, mainline valve by-passes, compressor station piping, meter station piping, or other short portion of a pipeline segment operating at alternative maximum allowable operating pressure cannot accommodate a geometry tool and a high resolution magnetic flux tool, use direct assessment (per §3325, §3327 and/or §3329) or pressure testing (per Chapter 23 of this Subpart) to assess that portion; [49 CFR 192.620(d)(9)(iii)]

j. conducting periodic assessments of integrity: [49 CFR 192.620(d)(10)]

i. determine a frequency for subsequent periodic integrity assessments as if all the alternative maximum allowable operating pressure pipeline segments were covered by Chapter 33 of this Subpart; and [49 CFR 192.620(d)(10)(i)]

ii. conduct periodic internal inspections using a high resolution magnetic flux tool on the frequency determined under Clause D.1.j.i of this Section; or [49 CFR 192.620(d)(10)(ii)]

iii. use direct assessment (per §3325, §3327 and/or §3329) or pressure testing (per Chapter 23 of this Subpart) for periodic assessment of a portion of a segment to the extent permitted for a baseline assessment under Clause D.1.i.iii of this Section;

k. making repairs: [49 CFR 192.620(d)(11)]

i. perform the following when evaluating an anomaly: [49 CFR 192.620(d)(11)(i)]

(a). use the most conservative calculation for determining remaining strength or an alternative validated

calculation based on pipe diameter, wall thickness, grade, operating pressure, operating stress level, and operating temperature: and [49 CFR 192.620(d)(11)(i)(A)]

(b). take into account the tolerances of the tools used for the inspection; [49 CFR 192.620(d)(11)(i)(B)]

ii. repair a defect immediately if any of the following apply: [49 CFR 192.620(d)(11)(ii)]

(a). the defect is a dent discovered during the baseline assessment for integrity under Subparagraph D.1.i of this Section and the defect meets the criteria for immediate repair in §1709.B; [49 CFR 192.620(d)(11)(ii)(A)]

(b). the defect meets the criteria for immediate repair in §3333.D; [49 CFR 192.620(d)(11)(ii)(B)]

(c). the alternative maximum allowable operating pressure was based on a design factor of 0.67 under Subsection A of this Section and the failure pressure is less than 1.25 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(ii)(C)]

(d). the alternative maximum allowable operating pressure was based on a design factor of 0.56 under Subsection A of this Section and the failure pressure is less than or equal to 1.4 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(ii)(D)]

iii. if Clause D.1.k.ii of this Section does not require immediate repair, repair a defect within one year if any of the following apply: [49 CFR 192.620(d)(11)(iii)]

(a). the defect meets the criteria for repair within one year in §3333.D; [49 CFR 192.620(d)(11)(iii)(A)]

(b). the alternative maximum allowable operating pressure was based on a design factor of 0.80 under Subsection A of this Section and the failure pressure is less than 1.25 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(B)]

(c). the alternative maximum allowable operating pressure was based on a design factor of 0.67 under Subsection A of this Section and the failure pressure is less than 1.50 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(C)]

(d). the alternative maximum allowable operating pressure was based on a design factor of 0.56 under Subsection A of this Section and the failure pressure is less than or equal to 1.80 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(D)]

iv. evaluate any defect not required to be repaired under Clause D.1.k.ii or iii of this Section to determine its growth rate, set the maximum interval for repair or re-inspection, and repair or re-inspect within that interval. [49 CFR 192.620(d)(11)(iv)]

E. Is there any change in overpressure protection associated with operating at the alternative maximum allowable operating pressure? Notwithstanding the required capacity of pressure relieving and limiting stations otherwise required by §1161, if an operator establishes a maximum allowable operating pressure for a pipeline segment in accordance with Subsection A of this Section, an operator must: [49 CFR 192.620(e)]

1. provide overpressure protection that limits mainline pressure to a maximum of 104 percent of the maximum allowable operating pressure; and [49 CFR 192.620(e)(1)]

2. develop and follow a procedure for establishing and maintaining accurate set points for the supervisory control and data acquisition system. [49 CFR 192.620(e)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 35:2807 (December 2009), amended LR 38:117 (January 2012), repromulgated by the Department of Natural Resources, Office of Conservation, LR 38:828 (March 2012).

James H. Welsh
Commissioner

1203#074

RULE

Department of Public Safety and Corrections Corrections Services

Offender Mail and Publications (LAC 22:I.313)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has amended the contents of Section 313, Offender Mail and Publications.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult Services

Subchapter A. General

§313. Offender Mail and Publications

A. Purpose. To state the secretary's policy regarding offender mail privileges, including publications, at all adult institutions.

B. Applicability. Deputy secretary, undersecretary, chief of operations, regional wardens, and wardens. Each warden is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation and for conveying its content to all offenders and affected employees.

C. Notice. Staff at each reception and diagnostic center or unit handling initial reception and diagnostic functions shall inform each offender in writing promptly after arrival of the department's rules for handling of offender mail, utilizing the notification of mail handling (Form C-02-009-A). This form shall be filed in the offender's master record.

1. The current offender population in DPS and C facilities is required to complete form C-02-009-A upon the issuance of this revision to department regulation No. C-02-009 "Offender Mail and Publications."

D. Policy. It is the secretary's policy that offenders may communicate with persons or organizations subject to the limitations necessary to protect legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution or maintenance of an environment free of sexual harassment), to prevent the commission of a crime, or to protect the interests of crime victims.

E. Definitions

DPS and C Facility—includes, for the purpose of this regulation, state operated prison facilities, and state privately operated prison facilities.

E-mail—a document created or received on an electronic mail system, including any attachments, such as word processing and other electronic documents, which may be transmitted with the message. E-mail is correspondence to or from an offender in an electronic format that is provided through the department's contractor for offender services.

Farm Mail Correspondence—offender to offender mail when housed at the same institution.

Indigent Offenders—those who do not have sufficient funds in the appropriate account(s) at the time of their request for indigent services and/or supplies to fully cover the cost of the requested services or supplies.

Nudity—pictorial depiction of buttocks, genitalia or female breasts (with the nipple or areola exposed).

Privileged Correspondence (includes mail to or from)—

- a. identifiable courts;
- b. identifiable prosecuting attorneys;
- c. identifiable probation and parole officers, parole board and pardon board;
- d. state and local executive officers;
- e. identifiable attorneys;
- f. secretary, deputy secretary, undersecretary, assistant secretary, chief of operations and other officials and administrators of grievance systems of the department;
- g. local, state or federal law enforcement agencies and officials.

Publication—book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, magazine/ newspaper clipping, article printed from the internet, plus other materials addressed to a specific offender such as advertising brochures, flyers and catalogs.

Sexually Explicit Material—any book, pamphlet, magazine, or printed matter however reproduced, which contains any picture, photograph, drawing or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, sadomasochistic abuse, bestiality and homosexuality. Explicit sexual material also includes that which contains detailed verbal descriptions or narrative accounts of sexually explicit conduct. (A publication will not be prohibited solely because it contains pictorial nudity that has a medical, educational or anthropological purpose.)

F. Offender Correspondence. Offenders may write and receive letters and e-mails subject to the following provisions.

1. Frequency. There shall be no limit placed on the number of letters or e-mails an offender may write or receive at personal expense and no limit placed on the length, language or content except when there is reasonable belief that limitation is necessary to protect public safety or institutional order, including restrictions relative to what may be reasonably stored in space provided and security. Offenders in segregation can write and receive letters on the same basis as offenders in general population.

2. Timely handling. All mail, incoming and outgoing, shall be handled without unjustified delay. Letters should generally not be held more than 48 hours and packages shall not be held more than 72 hours. This does not prohibit the holding of mail for offenders who are temporarily absent

from the institution and does not include weekends and holidays or emergency situations. When mail is received for an offender who has been transferred to another institution or released, the institution where the mail is received should attempt to forward the mail to him. The collection and distribution of mail is never to be delegated to an offender. Mail will be given directly to the receiving offender by an employee.

3. Correspondence. An offender may write to anyone except:

- a. a victim of any criminal offense for which the offender has been convicted or for which disposition is pending, or an immediate family member of the victim, except in accordance with specific procedures established by department regulations or as established by the warden in conjunction with the Crime Victims Services Bureau;
- b. any person under the age of 18 when the person's parent or guardian objects verbally or in writing to such correspondence;
- c. any person whom the offender is restrained from writing to by court order;
- d. any person who has provided a verbal or written request to not receive correspondence from an offender;
- e. any other person, when prohibiting such correspondence is generally necessary to further the substantial interests of security, order or rehabilitation.

4. Costs of Correspondence

a. Each offender shall pay personal mailing expenses, except an indigent offender. An indigent offender shall have access to postage necessary to send two personal letters per week, postage necessary to send out approved legal mail on a reasonable basis and basic supplies necessary to prepare legal documents. A record of such access shall be kept and the indigent offender's account shall reflect the cost of the postage and supplies as a debt owed in accordance with department regulations. Stationery, envelopes and stamps shall be available for purchase in the canteen.

b. E-mail shall only be available to offenders who have electronic postage capabilities through the department's contractor for offender services.

5. Outgoing General Correspondence and Farm Mail

a. Review, Inspection and Rejection. Outgoing general correspondence and farm mail shall not be sealed by the offender and may be read and inspected by staff. Outgoing e-mail may also be read by staff. The objectives to be accomplished in reading outgoing mail differ from the objectives of inspection. In the case of inspection, the objective is primarily to detect contraband. The reading of mail and e-mail is intended to reveal, for example, escape plots, plans to commit illegal acts, or plans to violate institutional rules or other security concerns. Outgoing general correspondence and farm mail may be restricted, confiscated, returned to the offender, retained for further investigation, referred for disciplinary proceeding or forwarded to law enforcement officials, if review discloses correspondence or materials which contain or concern:

- i. the transport of contraband in or out of the facility;
- ii. plans to escape;
- iii. plans for activities in violation of facility or department rules;

iv. information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;

v. letters or materials written in code or a foreign language when the offender understands English (unless the warden or designee determines that the recipient is not fluent in English);

vi. mail which attempts to forward unauthorized correspondence to a third party;

vii. threats to the safety and security of staff, other offenders or the public, facility order or discipline or rehabilitation (including racially inflammatory material);

viii. sexually explicit material;

ix. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

b. Notice of Rejection. The offender sender shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the incoming/outgoing general correspondence, farm mail and e-mail notice of rejection (Form C-02-009-B). Any further delay in notification shall be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the administrative remedy procedure.

c. Limitations on Restrictions. Any restrictions imposed on outgoing general correspondence and farm mail shall be unrelated to the suppression of expression and may not be restricted solely based on unwelcome or unflattering opinions. Communication of malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest or offender shall be rejected. This shall not apply to information and/or statements communicated for the express purpose of obtaining legal assistance.

d. Procedures for Mailing. Outgoing general correspondence and farm mail shall be inserted into the envelope and left unsealed by the offender. All outgoing correspondence shall include:

i. a complete legible name and address of the party the correspondence is being sent to;

ii. the offender's name, DOC number, housing unit, and the name and mailing address of the institution which shall be written or typed on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing general correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution;

iii. outgoing e-mails shall be processed electronically and scanned for contents and phrases.

6. Incoming General Correspondence

a. Review, Inspection, and Rejection. All incoming general correspondence and e-mails must contain the return address of the sender, the name and DOC number of the offender and the name and mailing address of the facility. All incoming general correspondence shall be opened and inspected for contraband, cash, checks, and money orders and is subject to being read. Any stick on label or stamp may be removed if it appears to contain contraband. All incoming general correspondence may be rejected if such review discloses correspondence or material(s) which would

reasonably jeopardize legitimate penological interests, including, but not limited to, material(s) which contain or concern:

i. the transport of contraband in or out of the facility;

ii. plans to escape;

iii. plans for activities in violation of facility or department rules;

iv. plans for criminal activity;

v. violations of this regulation or unit rules;

vi. letters or materials written in code;

vii. threats to the safety and security of staff, other offenders, or the public, facility order, or discipline, or rehabilitation, (including racially inflammatory material);

viii. sexually explicit material;

ix. greeting cards larger than 8" x 10" and greeting cards containing electronic or other non-paper parts, cards constructed in such a way as to permit concealment of contraband;

x. other general correspondence for which rejection is reasonably related to a legitimate penological interest.

b. Incoming general correspondence containing any of the foregoing may be restricted, confiscated, returned to the sender, retained for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

c. Notice of Rejection. The offender shall be notified within three working days, in writing, of the correspondence or e-mail rejection and the reason therefore on the incoming/outgoing general correspondence, farm mail and e-mail notice of rejection (Form C-02-009-B). Any further delay in notification shall be based on ongoing investigation which would be compromised by notification. Rejections are appealable through the administrative remedy procedure.

7. Monetary Remittances

a. Incoming. Funds may only be sent to the facility and processed for hobbycraft purchases properly supported by a hobbycraft agreement in accordance with established policy and procedures.

b. For hobbycraft purchases, money from permissible sources may be accepted in the following forms:

i. postal, bank or commercially issued money orders;

ii. bank cashier checks;

iii. cash;

iv. personal checks.

c. All other offender funds shall be processed through the department's contractor for offender services in accordance with established policy and procedures.

d. Upon discovery of cash, multiple party checks, personal checks not for hobbycraft purchases or any other funds received in the mail for an offender, the offender shall be sent a monetary remittances notice of rejection (Form C-09-009-C) within three working days describing the contents of the mail, the date of its receipt and advising that he has seven working days to provide return postage. If return postage is not provided within seven working days, the postage will be provided by the unit. The offender's banking account will be charged if funds are available. If funds are

not available, a debt owed will be established pursuant to department regulations.

8. Identification of Privileged Correspondence. It is the responsibility and duty of institutional staff to verify the legitimacy of the official listed on the envelope. For purposes of this regulation, "identifiable" means that the official or legal capacity of the addressee is listed on the envelope and is verifiable. If not, then the letter is to be treated as general correspondence and an appropriate inquiry made into the offender's intent in addressing the envelope as privileged mail.

9. All outgoing privileged correspondence shall include:

a. a complete legible name and address of the party the correspondence is being sent to;

b. the offender's name, DOC number, housing unit, and the address of the institution on the upper left hand corner of the envelope. Drawings, writing, and marking on envelopes, other than return and sending address, are not permitted. All outgoing privileged correspondence shall be stamped in the mailroom to indicate it originates in a correctional institution;

c. outgoing privileged correspondence may be posted sealed, and will not be opened and inspected without express authorization from the warden or deputy warden as specified in Paragraph F.11 of this Section.

10. Incoming Privileged Correspondence

a. All incoming privileged correspondence must contain the return address of the sender and the name and DOC number of the offender and the name and mailing address of the facility. All incoming privileged correspondence shall be opened in the presence of the offender to whom it is addressed and inspected for the presence of cash, checks, money orders and contraband and to verify as unobtrusively as possible, that the correspondence does not contain material that is not entitled to the privilege. When the material is inspected and it is found to be bound or secured in any manner that would prevent the thorough inspection of the document, the offender shall have the option of allowing staff to take the document apart for adequate inspection or returning the material to the sender to require that the material be returned in a loose manner to allow for proper inspection. Additionally, offenders receiving legal material in the form of a compact disc shall have the option of paying for copies to be made by the facility or returning the disc to the sender in order to require that the material be converted to paper copies. Payment for paper copies of legal material from a compact disc shall be in accordance with established policy and procedures.

b. Incoming privileged mail may be opened and inspected outside the offender's presence in the circumstances outlined in Paragraph F.11 of this Section.

i. Inspection and Rejection. When, in the course of inspection, cash, checks, or money orders are found, they shall be removed and forwarded to the business office who will verify the legitimacy of the transaction in accordance with established policy and procedures.

ii. If material is found that does not appear to be entitled to the privilege or if any of the circumstances outlined in Paragraph F.11 of this Section. exist, the mail may be restricted, confiscated, returned to sender, retained

for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.

iii. Notice of Rejection. The offender shall be notified within three working days, in writing, of the correspondence rejection and the reason therefore on the privileged correspondence notice of rejection (Form C-02-009-D) describing the reason for the rejection and advising that he has seven working days to determine the disposition of the correspondence. Rejections are appealable through the administrative remedy procedure.

iv. Accidental Opening. If privileged correspondence is opened accidentally, outside the presence of the offender, the envelope shall be immediately stapled or taped closed and the envelope marked "accidentally opened" along with the date and employee's initials. An unusual occurrence report shall be completed.

11. Mail Precautions

a. The wardens and deputy wardens are authorized to open and inspect incoming and outgoing privileged mail outside the offender's presence in the following circumstances:

i. letters that are unusual in appearance or appear different from mail normally received or sent by the individual or public entity;

ii. letters that are of a size or shape not customarily received or sent by the individual or public entity;

iii. letters that have a city and/or state postmark that is different from the return address;

iv. letters that are leaking, stained, or emitting a strange or unusual odor or have a powdery residue;

v. when reasonable suspicion of illicit activity has resulted in a formal investigation and such inspection has been authorized by the secretary or designee.

12. Offender Organizations. Offender organizations must pay the postage costs for all of their outgoing mail. All outgoing mail must be approved by the offender organization sponsor.

G. Procedures for Publications

1. Publications (see definition in Subsection E) may be read and inspected to discover contraband and unacceptable depictions and literature. Unless otherwise provided by the rules of the institution, all printed matter must be received directly from the publisher. Multiple copies of publications for any one individual offender are not allowed. Samples inserted in publications will be removed prior to delivery.

2. Newspaper and magazine clippings (xerox copies allowed) as well as articles printed from the internet are considered publications for the purpose of review pursuant to this regulation. However, they are not required to originate from the publisher. A limit of five clippings/articles may be received within a piece of regular correspondence and the quantity received may be further limited by what can be reasonably reviewed for security reasons in a timely manner. Multiple copies of the same clippings/articles for any one individual offender are not allowed. Inclusion of clippings/articles in regular correspondence may delay the delivery.

3. Refusal of Publications. Printed material shall only be refused if it interferes with legitimate penological objectives (including but not limited to deterrence of crime,

rehabilitation of offenders, maintenance of internal/external security of an institution or maintenance of an environment free of sexual harassment), or if the refusal is necessary to prevent the commission of a crime or to protect the interests of crime victims. This would include but not be limited to the following described categories:

- a. security issues:
 - i. maps, road atlas, etc. that depict a geographic region that could reasonably be construed to be a threat to security;
 - ii. writings that advocate, assist or are evidence of criminal activity or facility misconduct;
 - iii. instructions regarding the ingredients or manufacturing of intoxicating beverages or drugs;
 - iv. information regarding the introduction of, or instructions in the use, manufacture, storage, or replication of weapons, explosives, incendiaries, escape devices or other contraband;
 - v. instructs in the use of martial arts;
 - vi. racially inflammatory material or material that could cause a threat to the offender population, staff, and security of the facility;
 - vii. writings which advocate violence or which create a danger within the context of a correctional facility;
- b. sexually explicit material:
 - i. it is well established in corrections that sexually explicit material causes operational concerns. It poses a threat to the security, good order and discipline of the institution and can facilitate criminal activity. Examples of the types of behavior that result from sexually explicit material include non-consensual sex, sexual molestation of other offenders or staff, masturbation or exposing themselves in front of staff and inappropriate touching or writing to staff or other forms of sexual harassment of staff and/or offenders;
 - ii. sexually explicit material can portray women (or men) in dehumanizing, demeaning and submissive roles, which, within an institutional setting, can lead to disrespect and the sexual harassment of female (or male) correctional staff. Lack of respect and control in dealing with offenders can endanger the lives and safety of staff and offenders;
 - iii. the viewing of sexually explicit material undermines the rehabilitation of offenders as it can encourage deviant, criminal sexual behavior. Additionally, once sexually explicit material enters an institution, it is impossible to control who may view it. When viewed by an incarcerated sex offender, it can undermine or interrupt rehabilitation efforts;
 - iv. publications that depict nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one time issues will not be allowed;
- c. when screening publications for acceptability, the following categories shall be utilized:
 - i. Category 1—presumption of non-acceptability;
 - ii. Category 2—those that need to be reviewed on a case-by-case basis prior to allowing them to be delivered to the recipient and subject to review by the regional warden;

- iii. Category 3—presumption of acceptability;
 - d. publications can be added, deleted or moved from one category to another at the discretion of the secretary at any time;
 - e. when an institution receives a Category 2 publication which has not already been ruled on by the regional wardens, the mailroom shall send the offender a notice of pending review of publication (Form C-02-009-E) and forward the publication to the regional warden who shall determine acceptability. When an institution suspends delivery of an issue of a Category 3 publication, the regional warden is notified. The mailroom will send the offender a notice of pending review of publication (Form C-02-009-E.) The regional wardens shall determine if the publication should be moved to Category 2. When magazines are received that are not currently listed, the regional warden shall be notified;
 - f. procedures when publication is refused. The offender shall be notified within three working days of the refusal and the reason therefore on the publications notice of rejection (Form C-02-009-F) describing the reason for the rejection and advising that he has seven working days to determine the publication's disposition. Rejections are appealable through the administrative remedy procedure. The institution should retain possession of the disputed item(s) until the exhaustion of administrative and judicial review.

H. Procedures for Photographs, Digital or Other Images

1. Offenders shall not be allowed to receive or possess photographs or digital or other images that interfere with legitimate penological objectives (including but not limited to deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment), or to prevent the commission of a crime or to protect the interests of crime victims. This includes photographs, digital or other images which expose the genitals, genital area (including pubic hair), anal area, cheeks of the buttocks or female breasts (or breasts which are designed to imitate female breasts). These areas must be covered with garments which cannot be seen through.
2. Lingerie will not normally be acceptable whether transparent or not. Swimwear will only be acceptable if the overall context of the picture is reasonably related to activities during which swimwear is normally worn. Suggestive poses alone may be sufficient cause of rejection regardless of the type of clothing worn.
3. Each institution shall develop a procedure that serves to reasonably restrict an offender's possession of multiple copies of the same photograph or digital or other image.
4. Hard backed and laminated photographs or digital or other images that are subject to alteration or modification may be rejected.
5. The term "photograph" includes other images such as those created by a digital imaging device or e-mails.
6. The offender shall be notified within three working days, in writing, of the photograph rejection and the reason therefore on the photographs notice of rejection

(Form C-02-009-G) describing the reason for the rejection and advising that he has seven working days to determine the photograph's disposition. Rejections are appealable through the administrative remedy procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A), Guajardo v. Esteile, 580 F.2d 748 (5th Cir. 1978)

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 5:4 (January 1979), amended LR 10:803 (October 1984), LR 11:360 (April 14985), amended by the Department of Public Safety and Corrections, Corrections Services, LR 33:851 (May 2007), amended LR 38:830 (March 2012).

James M. Le Blanc
Secretary

1203#080

RULE

**Department of Public Safety and Corrections
Corrections Services**

Offender Visitation (LAC 22:I.316)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, has amended the contents of Section 316, Offender Visitation.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 3. Adult Services

§316. Offender Visitation

A. - J.6.d. ...

e. Visitors are allowed to bring only enough cash money for vending machines and/or concessions into the visiting area. Financial transactions for offenders shall be in the form of cash and/or credit or debit card payments made at the unit's visitor center kiosk machines provided by the department's contractor for offender services for use by the offender's approved visitors. All other money from permissible sources may be accepted and processed in accordance with established policy and procedures.

NOTE: Contractor fees shall apply to this transaction.

J.6.f. - Q.18. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:833(A).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 5:2 (January 1979), amended LR 11:1096 (November 1985), repromulgated LR 29:2851 (December 2003), amended by the Department of Public Safety and Corrections, Corrections Services, LR 32:406 (March 2006), LR 35:1248 (July 2009) LR 37:2177 (July 2011), LR 38:835 (March 2012).

James M. Le Blanc
Secretary

1203#079

RULE

**Department of Transportation and Development
Professional Engineering and Land Surveying Board**

Definitions (LAC 46:LXI.105)

Under the authority of the Louisiana Professional Engineering and Land Surveying Licensure Law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Professional Engineering and Land Surveying Board has amended its rules contained in LAC 46:LXI.Chapters 1-33.

This is a technical revision of an existing Rule under which LAPELS operates. This change clarifies the requirement that certain types of surveying and mapping functions must be performed by or under the responsible charge of either a professional engineer or a professional land surveyor.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXI. Professional Engineers and Land Surveyors

Chapter 1. General Provisions

§105. Definitions

A. The words and phrases defined in R.S. 37:682 shall apply to these rules. In addition, the following words and phrases shall have the following meanings, unless the content of the rules clearly states otherwise.

* * *

Practice of Land Surveying—defined in R.S. 37:682. The board recognizes that there exists a close relationship between land surveying and some areas of engineering, with some activities common to both professions; however, survey work related to property boundaries must be performed under the responsible charge of a professional land surveyor. Presented below are guidelines which shall be used as an aid in determining the types of surveying services which may be rendered by professional land surveyors or professional engineers.

a. - b.viii. ...

c. Surveying and mapping functions which do not require the establishment of the relationship of property ownership boundaries may be performed by or under the responsible charge of either a professional engineer or a professional land surveyor. Such surveying and mapping functions include:

c.i. - d. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Surveyors, LR 4:298 (August 1978), amended LR 5:110 (May 1979), LR 7:643 (December 1981), LR 14:449 (July 1988), LR 16:772 (September 1990), LR 17:804 (August 1991), LR 20:901 (August 1994), amended by the

Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1020 (July 2001), LR 30:1704 (August 2004), LR 32:1618 (September 2006), LR 35:1908 (September 2009), LR 38:835 (March 2012).

Donna D. Sentell
Executive Director

1203#041

RULE

Department of Treasury Board of Trustees of the Louisiana State Employees' Retirement System

Procedures for Processing Disability Applications
(LAC 58:I.2511, 2513, 2521 and 2523)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees Retirement System ("LASERS") has amended LAC 58:I.2511 and 2513 and repealed LAC 58:I.2521 and 2523, regarding procedures for processing disability retirement applications. These changes were made in order to aid staff and disability retirees and to make the Rules more consistent with current practice and statutory law. These Rule changes comply with and are enabled by R.S. 11:515.

Title 58 RETIREMENT

Part I. Louisiana State Employees' Retirement System Chapter 25. Procedures for Processing Disability Applications

§2511. Certification of Continuing Eligibility

A. LASERS may require a disability retiree to complete an annual attending physician statement ("AAPS") once each year during the first five years following the disability retirement and once in every three years thereafter until the retiree has reached the equivalent age of regular retirement unless the medical evidence shows conclusively that the disability retiree cannot recover from the disability. The AAPS must be returned within 30 business days of the anniversary date of the accrual of retirement benefits by the disability retiree. Depending on the results of the AAPS LASERS may require a disability retiree to undergo a medical examination.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:220.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 26:1490 (July 2000), LR 27:1581 (September 2001), LR 32:265 (February 2006), LR 38:836 (March 2012).

§2513. Limitation on Earnings

A. - B. ...

C. Repealed.

D. Each disability retiree may be required to submit a notarized annual statement of earned income for the previous calendar year. The statement must be submitted no later than May 1, of each calendar year, otherwise the benefit will be discontinued effective June 1 of that calendar year,

without retroactive reimbursement, until the statement is filed. If a disability retiree refuses to submit the statement for the remainder of the calendar year, all the retiree's rights in and to the disability retirement may be revoked by the board.

E. If the earnings limit is exceeded, LASERS may take appropriate action, including reducing future benefits to recover the amount of excess earnings. The disability retiree shall be notified in writing of the reduced amount at least 30 days prior to the reduction taking effect.

F. If it is determined that a disability retiree is engaged in gainful occupation which places the retiree over the earnings limit, then the amount of the disability benefit may be reduced to an amount within the retiree's earnings limit. Should the retiree's earning capacity later change, the disability benefit may be further modified in accordance with R.S. 11:221.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1959 (October 1998), LR 27:1581 (September 2001), LR 38:836 (March 2012).

§2521. Notices

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1960 (October 1998), LR 27:1582 (September 2001), repealed LR 38:836 (March 2012).

§2523. Conversion to Regular Retirement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 24:1960 (October 1998), LR 27:1582 (September 2001), repealed LR 38:836 (March 2012).

Cindy Rougeou
Executive Director

1203#004

RULE

Workforce Commission Office of Workers' Compensation

Pharmaceutical Billing (LAC 40:I.2915)

In accordance with R.S. 49:950 et seq., the Louisiana Workforce Commission, Office of Workers' Compensation, pursuant to the authority vested in the director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Provisions Act, has amended LAC 40:2915. The Rule provides a greater degree of clarity as to the amount charged and amount being reimbursed between payors and pharmacies. The final Rule is set forth below.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Medical Guidelines

**Chapter 29. Pharmacy Reimbursement Schedule, Billing
Instruction and Maintenance Procedures**

§2915. Billing Instructions

A. Pharmaceutical billing must occur on either the CMS 1500 or a company invoice. Billing document will include the following minimum information:

1. claimant name;
2. claimant address;
3. unique claimant identifier;
4. date prescription was filled;
5. national drug code;
6. drug name;
7. drug quantity;
8. total charge;
9. number of days prescribed;
10. prescribing providers name;
11. prescribing providers NPI;
12. pharmacists I.D.;
13. dispensing facility address;
14. dispensing facility phone number;
15. medication charge; and
16. dispensing fee charge.

B. Entities issuing reimbursement documentation will include the following information:

1. claimant name;
2. claimant address;
3. unique claimant identifier;
4. date prescription was filled;
5. national drug code;
6. drug name;
7. amount charged per prescription;
8. total amount charged;
9. individual drug reimbursement;
10. total bill reimbursement;
11. individual tax reimbursement;
12. total tax reimbursement;
13. total amount reimbursed;
14. payor name;
15. payor address; and
16. payor phone number.

C. - C.35. ...

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

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), amended by the Workforce Commission, Office of Workers' Compensation, LR 38:837 (March 2012).

Curt Eysink
Executive Director

1203#012

Notices of Intent

NOTICE OF INTENT

Department of Children and Family Services Division of Programs Economic Stability and Self-Sufficiency Section

KCSP Grant Reduction and Termination of Post-FITAP
Transitional Services (LAC 67:III.5329 and 5729)

The Department of Children and Family Services (DCFS), Economic Stability and Self-Sufficiency Section, in accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 13, Kinship Care Subsidy Program (KCSP), Chapter 53, Subchapter B, and Section 5329, and Subpart 16, Strategies to Empower People (STEP) Program, Chapter 57, Subchapter C, Section 5729.

Pursuant to Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant, adjustments to KCSP eligibility criteria will reduce the Income After Pretest monthly limit and monthly payment amount from \$280 to \$222. The department is terminating the STEP Program's transitional support service benefits, which are commonly known as Post-FITAP Supportive Services.

Action is required in this matter as funding is no longer available and the department is required to maintain fiscal responsibility by reducing expenditures to reconcile with available funding. These changes have been born of necessity to maximize available funding while minimizing the impact to clients. The adjustments to KCSP will result in minimal reductions in the number of children served and payment amounts. Transitional supportive services are approved at the discretion of the secretary and are subject to available funding. This action was made effective by an Emergency Rule dated and effective December 1, 2011.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5329. Income

A. - B.3. ...

C. Income after Pretest. The child is determined eligible for KCSP if the child's monthly countable income is, effective December 1, 2011, less than \$222. If the child's monthly countable income is, effective December 1, 2011, \$222 or more, the child is ineligible.

D. Payment Amount. Effective December 1, 2011, payment amount is \$222 per month for each eligible child.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session, 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:1617 (September 2006), LR 32:1913 (October 2006), repromulgated LR 32:2098 (November 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2537 (November 2010), LR 38:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter C. STEP Program Process

§5729. Support Services

A. Clients may be provided support services that include but are not limited to:

1. a full range of case maintenance and case management services designed to lead to self-sufficiency;
2. transportation assistance;
3. Supplemental Nutrition Assistance Program (SNAP) benefits;
4. Medicaid benefits;
5. child care;
6. TANF-funded services; and
7. other services necessary to accept or maintain employment.

B. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004), amended LR.32:2098 (November 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 38:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule minimally impacts the family's financial resources and will have minimal impact on the family's stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will have minimal effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will have no effect on family earnings. This Rule will reduce unearned income in the family budget. Although the family will have a reduction in cash assistance from the TANF Block Grant, they may see an increase in other public benefits such as Supplemental Nutrition Assistance Program (SNAP).

5. What effect will this have on the behavior and personal responsibility of children? This Rule will have no

effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these functions are department functions.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The department, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

All interested persons may submit written comments through, April 26, 2012, to Sammy Guillory, Deputy Assistant Secretary, Division of Programs, Post Office Box 94065, Baton Rouge, LA 70804-9065.

Public Hearing

A public hearing on the proposed Rule will be held on April 26, 2012, at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call area code (225) 342-4120 (voice and TDD).

Ruth Johnson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: KCSP Grant Reduction and Termination of Post-FITAP Transitional Services

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

This rule proposes to continue the provisions of the December 1, 2011 emergency rule that amended Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 13, Chapter 53 Application, Eligibility, and Furnishing Assistance, Subchapter B Conditions of Eligibility, Section §5329 Income for the Kinship Care Subsidy Program (KCSP) and Section §5729 Support Services for the Strategies to Empower People (STEP) Program. The proposed amendment to Section §5329 Income reduces the "Income After Pretest" limit and "Payment Amount" for each eligible child from \$280 to \$222. The proposed amendment to Section §5729 Support Services terminates transitional support service benefits.

As a result of the U.S. Congress not renewing the Supplemental Temporary Assistance for Needy Families (TANF) Block Grant for Federal Fiscal Year 2012, the Department of Children and Family Services (DCFS) reduced KCSP payments and payments for STEP support services in a December 1, 2011 emergency rule. DCFS anticipates that the implementation of these amendments will result in an estimated programmatic savings of approximately \$3,247,478 in Federal funds for FY 11-12 (\$2,670,262 KCSP and \$578,200 STEP). The funding is a 100% Federal and no state match is required.

The numbers reflected above are based on current recipient benefit amounts and savings are projected through the remainder of the state fiscal year. The only costs associated with this proposed rule is State's administrative expense for promulgation of this proposed rule and the final rule estimated at \$984 (\$492 SGF and \$492 FED).

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

Implementation of this proposed rule will have no effect on state or local revenue collections.

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

This rule proposes to continue the provisions of the December 1, 2011 emergency rule that reduced the Kinship Care Subsidy Program (KCSP) Income After Pretest limit and Payment Amount for each eligible child from \$280 to \$222. DCFS anticipates that approximately 6,577 children per month will receive a reduced KCSP payment amount resulting in programmatic savings of \$2,670,262 ($\$280 - \$222 = \$58 \times 6,577 \text{ individuals} = \$381,466 \times 7 \text{ months} = \$2,670,262$). Each child's income will be reviewed at the next case action for a determination of continued eligibility.

Also, this rule proposes to terminate transitional support service benefits of the Strategies to Empower People (STEP) Program, which are commonly known as Post-FITAP Supportive Services. DCFS anticipates that approximately 687 Post-FITAP recipients per month will no longer receive transitional support service benefits. Transitional services include 12 monthly transitional transportation payments of \$120 and a \$200 maximum lifetime benefit in other transitional supportive services. Programmatic savings are estimated $\$578,200$ ($685 \text{ individuals} \times \$120 = \$82,200 \times 7 \text{ months} = \$575,400$ and $2 \text{ individuals} \times \$200 = \$400 \times 7 \text{ months} = \$2,800$).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated impact on competition and employment.

Sammy Guillory
Deputy Assistant Secretary
1203#075

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State
Accountability System
(LAC 28:LXXXIII.601, 613, and 2403)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System*: §601. Defining a Graduation Index, §613. Calculating a Graduation Index, and §2403. Transfer of Schools out of the Recovery School District. Proposed changes in Bulletin 111, Chapter 6, provide detail for how the graduation index is calculated. Proposed changes in Bulletin 111, Chapter 24, provide detail for removing policy related to the recovery school district. The Board of Elementary and Secondary Education adopted Bulletin 129 this past spring with the goal of creating one bulletin to comprehensively address the rules and regulations applicable to the recovery school district

(RSD). The proposed revisions move language from *Bulletin 111—The Louisiana School, District and State Accountability System*, Section 2403, that is exclusively applicable to schools in the RSD, to *Bulletin 129—The Recovery School District*, Section 505. This language references the procedures to be followed for schools that are under the jurisdiction of the recovery school district for five or more years. Moving this language to Bulletin 129 will ensure that any person consulting Bulletin 129 will have access to this important information. Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

**Title 28
EDUCATION**

**Part LXXXIII. Bulletin 111—The Louisiana School,
District, and State Accountability System**

Chapter 6. Graduation Cohort, Index, and Rate

§601. Defining a Graduation Index

A. Beginning in 2007, the Louisiana Department of Education (LDE) will calculate a graduation index based on a cohort of students for use in the school performance score of each school with students in grade twelve for schools with 10 or more students in a cohort.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1024 (June 2006), amended LR 38:

§613. Calculating a Graduation Index

A. Points shall be assigned for each member of a cohort during the cohort's fourth year of high school according to the following table.

1. Students who do not dropout and do not earn a diploma, a GED, a skills certificate, or a certificate of achievement after four years of high school are defined as attendees.

Student Result	Points
Academic OR Career/Technical Endorsement	180
TOPS Opportunity Award	160
BESE Approved Industry Based Certification OR TOPS Tech and Dual Enrollment OR TOPS Tech and Articulated Credit	140
Regular HS Diploma	120
GED	90
Skills Certificate/Certificate of Achievement	60
Attendee	30
Dropout	0

B. The graduation index of a school shall be the average number of points earned by cohort members.

1. Beginning with the 2011 baseline SPS, the baseline graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the current subgroup component (see §708).

2. Beginning with the 2012 growth SPS, the growth graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the prior year's subgroup component (see §708).

3. The cohort graduation rate adjustment factor shall be calculated using the formula: unadjusted graduation index + [(graduation rate - graduation rate target) * 1.5].

4. The graduation rate target shall be 65 percent in 2011 and 2012.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010), LR 36:2243 (October 2010), LR 37:3201 (November 2011), LR 38:

Chapter 24. Recovery School District

§2403. Transfer of Schools out of the Recovery School District

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:2596 (September 2011), repealed LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford,

Catherine R. Pozniak
Executive Director

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

**RULE TITLE: Bulletin 111—The Louisiana School,
District, and State Accountability System**

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

Proposed changes in Bulletin 111, Chapter 6 provide detail for how the Graduation Index is calculated.

Proposed changes in Bulletin 111, Chapter 24 provide detail for removing policy related to the Recovery School District. The Board of Elementary and Secondary Education adopted Bulletin 129 this past spring with the goal of creating one bulletin to comprehensively address the rules and regulations applicable to the Recovery School District (RSD). The proposed revisions move language from Bulletin 111, *The Louisiana School, District and State Accountability System*, Section 2403, that is exclusively applicable to schools in the RSD, to Bulletin 129, *The Recovery School District*, Section 505. This language references the procedures to be followed for schools that are under the jurisdiction of the Recovery School District for five or more years. Moving this language to Bulletin 129 will ensure that any person consulting Bulletin 129 will have access to this important information.

The proposed rule changes will result in no cost or savings to state or local governmental.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1203#014

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 129—The Recovery School District
Return of Schools to LEA (LAC 28:CXLV.505)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 129—The Recovery School District*: §505. Return of Schools to LEA. The Board of Elementary and Secondary Education adopted Bulletin 129 this past spring with the goal of creating one bulletin to comprehensively address the rules and regulations applicable to the Recovery School District (RSD). The proposed revisions move language from *Bulletin 111—The*

Louisiana School, District and State Accountability System, Section 2403,; that is exclusively applicable to schools in the RSD, to Bulletin 129—*The Recovery School District*, Section 505. This language references the procedures to be followed for schools that are under the jurisdiction of the recovery school district for five or more years. Moving this language to Bulletin 129 will ensure that any person consulting Bulletin 129 will have access to this important information. Further, the language in Bulletin 111 has been revised to reference the Section in Bulletin 129 where the language will be moved to, so that any person searching for this information in its prior location will be directed to Bulletin 129. The revisions in Bulletin 129 also remove duplicative language and contain minor modifications to clarify some unfamiliar terms and processes in the current language.

**Title 28
EDUCATION**

**Part CXLV. Bulletin 129—The Recovery School District
Chapter 5. Failed Schools**

§505. Return of Schools to LEA

A. Schools transferred to the jurisdiction of RSD shall remain with the RSD for a period of not less than five years.

1. A school that has been under the jurisdiction of the RSD for a minimum of five years as either a direct-run RSD school or a Type-5 charter school may be returned to its former local educational agency (LEA) or an alternative governing authority (AGA), if authorized by law, based upon the RSD's report and recommendation to BESE. The RSD's report shall include the following:

a. the status of the school, the nature of its faculty and administration, the demographics and size of the student body, its organizational and management structure, whether student academic performance has improved, the amount of any improvement, an explanation of why student academic performance has or has not improved, and to what extent performance targets were achieved;

b. the RSD report shall also include a recommendation as to whether the school should:

i. remain within the RSD in the same operational status;

ii. remain within the RSD in a new operational status;

iii. close, with the reasons why it should close; or

iv. return to the original LEA, with proposed stipulations and conditions for the return.

B. An eligible school may elect to transfer from the RSD and return to its former local educational agency (LEA) or an alternative governing authority (AGA), if authorized by law. If a school chooses not to transfer to its former LEA or an AGA, it will automatically remain within the RSD for an additional school year. The school will have the opportunity to choose to return to its former LEA or AGA every year the school continues to meet eligibility criteria, in accordance with the procedures outlined below.

C. No school shall be eligible for transfer from the jurisdiction of the recovery school district until the conclusion of the 2011-2012 school year. No school shall be transferred from the RSD without the approval of the Louisiana Board of Elementary and Secondary Education School (BESE) and the recipient LEA or AGA.

D. A non-failing school is eligible for transfer from the jurisdiction of the recovery school district provided it meets all of the following.

1. The school will have been under the jurisdiction of the recovery school district for a minimum of five years as either a direct-run RSD school or a Type-5 charter school. The decision to transfer will be considered at the earliest during the school's fifth year under the jurisdiction of the RSD, with the proposed transfer occurring at the conclusion of that same school year.

2. The school has earned for the past two consecutive years a school performance score (SPS) of 80.0 or above. If the academically unacceptable school (AUS) bar is raised above 75.0, then the school must have earned for the past two consecutive years a school performance score that is at least 5.0 points above the AUS bar as established by BESE pursuant to the statewide school and district accountability system.

3. The school elects to transfer from the RSD and has notified BESE in writing, no later than December 1 of the year preceding the effective date of the proposed transfer.

a. Type 5 Charter School. The charter school's governing authority, in accordance with its by-laws, shall notify BESE in writing of its desire to transfer from the jurisdiction of the RSD.

b. Direct-Run RSD School. The superintendent of the RSD, in consultation with the parents of students attending the school, and the school's staff, shall make a recommendation to BESE seeking transfer from the jurisdiction of the RSD.

4. No later than January 1 of the school year preceding the effective date of the proposed transfer, BESE shall make a determination whether or not to allow an eligible non-failing school to seek transfer to its former LEA or an AGA. At that time, BESE may require the school to agree to comply with certain requirements prior to the effective date of the proposed transfer.

5. If BESE approves the transfer, the former LEA or the AGA must notify BESE, in writing, whether it has agreed to accept jurisdiction of the transferring school no later than March 1 of the school year prior to the effective date of the proposed transfer.

6. The following parties must agree to the transfer no later than April 1 of the school year preceding the effective date of such transfer:

- a. the governing authority of a charter school, if a charter school; or
- b. the superintendent of the RSD, if a direct-run RSD school; and
- c. BESE; and
- d. the recipient LEA or AGA.

E. A direct-run RSD school that is deemed a failing school may be eligible for transfer from the jurisdiction of the recovery school district provided it meets all of the following.

1. The school will have been under the jurisdiction of the recovery school district for a minimum of five years at the conclusion of the school year preceding the effective date of the proposed transfer. The decision to transfer will be considered at the earliest during the school's fifth year under the jurisdiction of the RSD, with the proposed transfer occurring at the conclusion of that same school year.

2. The school is labeled as in AUS status as defined by the statewide school and district accountability system during its fifth year, or any subsequent year the school remains within the RSD.

3. The school is not undergoing a charter conversion or phase-out, as defined in Subsection J below.

4. The recipient LEA or AGA has agreed to accept the school and has developed a proposal for the school's turnaround.

5. BESE has approved the recipient authority's turnaround proposal for the school.

6. The following parties have agreed to such transfer from the RSD:

- a. the superintendent of the RSD; and
- b. BESE; and
- c. the recipient LEA or AGA.

F. Type 5 Charter Schools. The transfer of a Type 5 charter school from the RSD shall become effective on July 1 of the year following BESE's approval of such transfer.

1. The charter school must negotiate a new charter contract agreement with the recipient authority to become either a Type 3 or Type 4 charter school. A copy of the signed negotiated charter contract agreement must be provided to BESE no later than April 1 preceding the effective date of the proposed transfer. The new charter contract agreement must:

- a. be effective on the date of transfer (July 1);
- b. be consistent with all state and federal laws governing charter school authorization;
- c. contain academic performance standards and other requirements for extension and renewal that are equal to or greater than Type 5 charter school performance standards as enumerated in BESE Bulletin 126; and
- d. comply with any transfer conditions previously specified by BESE at the time BESE made the determination to allow the transfer (prior to January 1).

2. Transfer to a Type 3 Charter School. If the charter school elects to become a Type 3 charter school, the non-profit charter organization shall apply to the recipient authority to operate the school. The charter contract agreement must conform to all the laws and requirements governing Type 3 charter schools.

3. Transfer to a Type 4 Charter School. If the charter school elects to become a Type 4 charter school, the recipient authority must apply to BESE to operate the charter school, with the approval from the charter operator. The charter contract agreement must conform to all the laws and requirements governing Type 4 charter schools.

G. Direct-Run RSD Schools. A direct-run RSD school may transfer directly to the recipient authority as a direct-run school, or may transfer as a Type 3 or Type 4 charter school.

1. Transfer to a Charter School. A non-failing direct-run RSD school may elect to transfer to the recipient authority as either a Type 3 or a Type 4 charter school. Such transfer to the recipient authority shall be made in the same manner as described in Paragraph F.1 above.

2. Transfer as a Direct-Run School. A direct-run RSD school may elect to become a direct-run school under the recipient authority, in which case the recipient authority shall enter into a memorandum of understanding (MOU) with BESE. The MOU shall be effective for a maximum of three years, and shall provide, at a minimum, the following.

a. Non-Failing Direct-Run RSD Schools

i. Preserve the Existing School Autonomy. The transferring school shall retain its existing level of autonomy over such elements, including but not limited to, its educational program and curricula, its staffing, and its budget decisions.

ii. Continued Performance. The recipient authority shall be required to maintain school performance equal to or greater than that achieved by the RSD. Should the transferring school become AUS during the term of the MOU, the school shall be immediately returned to the jurisdiction of the RSD.

iii. School Budget. The transferring school shall maintain its school-level budget at a level at least equal to that school-level budget it maintained while in the RSD, adjusted for current enrollment, the MFP and/or federal, local and/or other sources of revenue.

iv. Recourse. Violation of the MOU may result in the school being returned to the RSD.

b. Failing Direct-Run RSD Schools

i. Turnaround Plan. The MOU shall identify key benchmarks and milestones demonstrating the turnaround strategy being executed and successfully improving student academic outcomes.

H. The RSD has the responsibility to maintain high educational standards for all direct-run schools and charter schools under its jurisdiction.

I. Type 5 Charter School Accountability. The renewal of a charter agreement for any Type 5 charter school that is labeled AUS in its fifth year of operation shall be governed by provisions found in Bulletin 126. If not renewed, the charter school will either revert to the direct control of the RSD, be closed, or may be transferred to another non-profit charter organization.

J. Direct-Run RSD Schools. Any direct-run RSD school that is labeled AUS in its fifth year of operation within the RSD shall be subject to one of the following.

1. Phase-Out. The school will be closed according to a timeline and its students will be transferred to other high performing schools.

2. Charter Conversion. The school may be converted to the control of a charter school that has a proven ability to implement a school turnaround model and will operate as a Type 5 charter school.

3. Transfer to a Recipient LEA or AGA. The school may be transferred to a recipient LEA or AGA, which has the proven ability to implement a school turnaround plan.

4. Remain within the RSD. The school may remain within the RSD for an additional five-year period. The school performance will be reviewed on an annual basis and, if the school remains in AUS, a charter operator or recipient authority may submit a proposal to BESE for operation of the school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A)(10), R.S. 17:10.5(A)(1), R.S. 17:10.7(A)(1), R.S. 17:1990(A)(2), R.S. 17:10.5(C), and R.S. 17:10.7(C).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:878 (March 2011), amended LR 38:354 (February 2012), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption,

repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 129—The Recovery School
District—Return of Schools to LEA**

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

The proposed policy updates Bulletin 129, *The Recovery School District*. The cost to publish and distribute the Bulletin will cost approximately \$2,000.

The Board of Elementary and Secondary Education adopted Bulletin 129 this past spring with the goal of creating one bulletin to comprehensively address the rules and regulations applicable to the Recovery School District (RSD). The proposed revisions move language from Bulletin 111, *The Louisiana School, District and State Accountability System*, Section 2403, that is exclusively applicable to schools in the RSD, to Bulletin 129, *The Recovery School District*, Section 505. This language references the procedures to be followed for schools that are under the jurisdiction of the Recovery School District for five or more years. Moving this language to Bulletin 129 will ensure that any person consulting Bulletin 129 will have access to this important information. Further, the language in Bulletin 111 has been revised to reference the section in Bulletin 129 where the language will be moved to, so that any person searching for this information in its prior location will be directed to Bulletin 129. The revisions in Bulletin 129 also remove duplicative language and contain

minor modifications to clarify some unfamiliar terms and processes in the current language.

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

The proposed policy will have no effects on revenue collections of state and local governmental units.

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

The proposed policy will have no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1203#015

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Adult Education Programs (LAC 28: CXV. Chapter 27)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators: Chapter 27. Adult Education Programs*. Effective July 1, 2010, the governance of the Adult Education program changed from the Department of Education to the Louisiana Community and Technical College System. This Rule implements changes as a result of the elimination of the division of adult and community education within the Department of Education and transferred the responsibility for adult education programs from BESE to the Louisiana Community and Technical College System. As a result of this change, it is necessary to repeal Chapter 27, Adult Education Programs, Sections 2701-2715, as they currently exist, from Bulletin 741. This Rule implements changes as per Act 132 of the 2010 Regular Session of the Louisiana Legislature.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 27. Adult Education Programs

§2701. Program Administration

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1305 (June 2005), amended LR 35:2317 (November 2009), repealed LR 38:

§2703. Requirements for Students

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1306 (June 2005), amended LR 35:2318 (November 2009), repealed LR 38:

§2705. Requirements for Taking the GED Test

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1306 (June 2005), amended LR 35:2318 (November 2009), repealed LR 38:

§2707. Requirements for Passing the GED Test

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1306 (June 2005), amended LR 35:2318 (November 2009), repealed LR 38:

§2709. Requirements for GED Retesting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1306 (June 2005), amended LR 35:2318 (November 2009), repealed LR 38:

§2711. Issuance of Equivalency Diplomas

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14; R.S. 17:7(5)(C).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1307 (June 2005), amended LR 35:2318 (November 2009), repealed LR 38:

§2713. Regular High School Diploma for Veterans or Members of the United States Armed Forces

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1307 (June 2005), repealed LR 38:

§2715. Evening Schools for Adults

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), repealed LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comment

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Adult Education Programs

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

There are no implementation costs (savings) to the state or local governmental units as a result of this policy change, except for an estimated cost of \$164 due to expense associated with publication of the proposed policy change in the Louisiana Register.

This rule implements changes as per Act 132 of the 2010 Regular Session of the Louisiana Legislature. Act 132 eliminated the division of adult and community education within the Department of Education and transferred the responsibility for adult education programs from BESE to the Louisiana Community and Technical College System. The governance of the Adult Education program changed from the Department of Education to the Louisiana Community and Technical College System, effective July 1, 2010. As a result of this change, it is necessary to repeal Chapter 27 Adult Education Programs, Sections 2701-2715, as they currently exist, from Bulletin 741.

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

There will be no effect on revenue collections at the state or local government level.

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

The proposed bulletin revision will not create costs or economic benefits to persons directly affected or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed bulletin revision will have no effect on revenue collections at the state or local government level.

Beth Scioneaux
Deputy Superintendent
1203#018

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—Compulsory Attendance
(LAC 28: CXV.1103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §1103. Compulsory Attendance. This policy, related to compulsory attendance for grades K through 12, will ensure that LEAs follow proper procedures for exiting students in need of adult education. This policy revision was deemed necessary for inclusion in the bulletin, especially once Chapter 27 (Adult Education Programs) is repealed.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1103. Compulsory Attendance

A. Students who have attained the age of 7 years shall attend a public or private day school or participate in an approved home study program until they reach the age of 18 years. Any child below the age of 7 who legally enrolls in school shall also be subject to compulsory attendance. Refer to Chapter 33 for information on home study programs.

B. A parent, tutor, or legal guardian who has a student who is under the age of 18 and meets one of the requirements below shall be in compliance with the compulsory attendance law.

1. A student, under 18 years of age, who withdraws from school prior to graduating from high school and who has been ruled to be a truant, pursuant to the provisions of Chapter 15 of Title VII of the Louisiana Children's Code, by a court of competent jurisdiction can be ordered by the court to exercise one of the following options within 120 days of leaving school:

a. reenroll in school and make continual progress toward completing the requirements for high school graduation;

b. enroll in a high school equivalency diploma program and make continual progress toward completing the requirements for earning such diploma;

c. enlist in the Louisiana National Guard or a branch of the United States Armed Forces, with a commitment for at least two years of service, and earn a high school equivalency diploma during such service period.

2. If a student is under the age of 18, the parent or guardian may withdraw the student from high school if that student is seeking admission to a National Guard Youth Challenge Program in this state.

3. For a student who is under the age of 18 and enrolled in school beyond his/her sixteenth birthday, the parent or guardian may request a waiver from the local

superintendent for that student to exit school to enroll in an adult education program approved by the Louisiana Community and Technical College System (LCTCS).

a. In the case of a student with no parent or guardian, the local school superintendent may act on behalf of the student in requesting a waiver if appropriate documentation is on file at the local school board office and one or more of the following hardships exist:

- i. pregnant or actively parenting;
- ii. incarcerated or adjudicated;
- iii. institutionalized or living in a residential facility;
- iv. chronic physical or mental illness;
- v. family and/or economic hardships.

(a). Family and/or economic hardship is defined as a student who acts as a caregiver or must work to support the family due to a parent's death or illness, or needs to be removed from an existing home environment.

b. The local school superintendent or his/her designee may approve the request for exiting public or home school without requesting action from BESE. If the request to exit school to enroll in a LCTCS approved adult education program is denied at the local level, a student may request the waiver from the DOE for approval by BESE with documentation of reason for denial at the local level. Students seeking to exit school to enroll in adult education, who are enrolled in a formal education setting other than a public K-12 institution, may request a waiver from the institutional agency head or his/her designee. Mandatory attendance components shall be met in all of the above circumstances.

B.4. - N. ...

NOTE: Refer to §1117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:112; R.S. 17:221.3-4; R.S. 17:226.1; R.S. 17:233.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1273 (June 2005), amended LR 32:546 (April 2006), LR 32:1030 (June 2006), LR 33:2351 (November 2007), LR 35:641 (April 2009), LR 35:1097 (June 2009), LR 35:1475 (August 2009), LR 36:482 (March 2010), LR 36:1224 (June 2010), LR 37:1126 (April 2011), LR, 37:2132 (July 2011), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Compulsory Attendance

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

The policy revisions to Bulletin 741: *Louisiana Handbook for School Administrators*, Chapter 11, Section §1103 Compulsory Attendance, are related to the approval process for a student to exit school and enter an adult education program.

In June 2010, the Adult Education Program of the Department of Education moved under the governance of the Louisiana Community and Technical College System. Chapter 27 of Bulletin 741 covers all rules, regulations, and guidelines associated with adult education. The Department recommended BESE approval in order to repeal policies in Bulletin 741: Chapter 27. Adult Education Programs that are not related to K-12 education. The policies being recommended for approval are related to compulsory attendance for grades K through 12. This information will ensure that LEAs follow proper procedures for exiting students in need of adult education.

For each student who exits a public school as a result of this policy change, there will be a decrease in cost to the state and the local school district through the Minimum Foundation Program (MFP) to continue the education of the student.

There are student enrollment counts of the MFP taken each school year on October 1st and February 1st. If a student withdraws from school after the October 1st count and before the February 1st count, the full per pupil MFP allocation would be reduced from the district's payments. If a student withdraws from school after the February 1st count, the per pupil allocation would be reduced by half from the district's payments. The actual cost per student will depend on the district in which the student is enrolled, and the time of year the student may have withdrawn from school if this law and policy was not implemented.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1203#016

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—Technology Education
(LAC 28: CXV.2385)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741—Louisiana Handbook for School Administrators*: §2385. Technology Education. This action is necessary in order to set forth policy listing state recognized Technology Education course offerings within the CTE program. The two proposed course offerings will provide specific instruction and training to students interested in pursuing careers in petrochemical industry. These courses will cover content which is required of individuals pursuing careers in oil and gas production.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

**Chapter 23. Curriculum and Instruction
§2385. Technology Education**

A. Technology Education (formerly industrial arts) course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Advanced Electricity/Electronics	10-12	1
Advanced Metal Technology	10-12	1
Advanced Wood Technology	10-12	1
Aerospace Engineering	11-12	1
Basic Electricity/Electronics	9-12	1
Basic Metal Technology	9-12	1
Basic Wood Technology	9-12	1
Civil Engineering and Architecture	11-12	1
Communication/Middle School	6-8	-
Communication Technology	9-12	1
Computer Integrated Manufacturing	11-12	1
Construction/Middle School	6-8	-
Construction Technology	10-12	1
Cooperative Technology Education	10-12	3
Digital Electronics	9-10	1
Energy, Power, and Transportation Technology	9-12	1
Engineering Design I, II	11-12	1
Engineering Design and Development	11-12	1
General Technology Education	9-12	1
Introduction to Engineering Design	8-12	1
Manufacturing Technology	9-12	1
Manufacturing Technology/Middle School	6-8	-
Marine Engineering	11-12	0.5
Materials and Processes	10-12	1
Modular Technology/Middle School	6-8	-

Course Title(s)	Recommended Grade Level	Units
Oil and Gas Production Operations	11-12	1
Physics of Technology I	10-12	1
Physics of Technology II	11-12	1
Power Mechanics	9-12	1
Principles of Engineering	9-10	1
T2 Safety Systems for Oil and Gas Production	11-12	1
Technology Education Computer Applications	9-12	1
Technology Education Elective I, II	9-12	1/2-3
Transportation Technology/Middle School	6-8	-
Welding Technology	10-12	1
Industry-Based Certifications		
Advanced Technical Drafting	10-12	1
Architectural Drafting	10-12	1
Basic Technical Drafting	9-12	1
NCCER Carpentry I, II TE	11-12	1-3
NCCER Electrical I, II TE	11-12	1-3
NCCER Industrial Maintenance	11-12	1-3
NCCER Instrumentation Control Mechanic I, II	11-12	1-3
NCCER Insulating	11-12	1-3
NCCER Pipe Fitter I, II TE	11-12	1-3
NCCER Welding Technology I, II TE	11-12	1-3
Process Technician I, II	11-12	1

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7; R.S. 17:24.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1300 (June 2005), amended LR 33:279 (February 2007), LR 35:1229 (July 2009), LR 35:2323 (November 2009), LR 35:2747 (December 2009), LR 36:1997 (September 2010), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the

objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 741—Louisiana Handbook for School Administrators—Technology Education**

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

The Department of Education recommends relevant policy revisions to Bulletin 741: *Louisiana Handbook for School Administrators* as they relate to Career and Technical Education (CTE), Technology Education course offerings. The policy includes two additional courses that may be offered to students interested in pursuing careers in the petrochemical industry. There will be no costs to state governmental units as a result of this policy change. The Louisiana Department of Education anticipates no additional costs to Local Education Agencies as the cost to implement these courses will be similar to the costs incurred with offering other CTE course offerings.

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

There is no effect on revenue collections of state or local governmental units.

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

There will be no estimated cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be an increased rate of students graduating prepared for postsecondary education and or entry into the workforce in a high wage, high demand career area.

Beth Scioneux
Deputy Superintendent
1203#017

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State
Certification of School Personnel—Counselor K-12
(LAC 28:CXXXI.405 and 659)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*: §405. Counselor K-12 (Counselor in a School Setting) and §659. Counselor K-12 (Counselor in a School Setting). The proposed policy revision will require the completion of a master's degree program from a regionally accredited

college or university which has met the Council for Accreditation of Counseling and Related Educational Program (CACREP) guidelines for a standards based program in school counseling. The program must include a practicum/internship in school counseling, and the individual must receive a passing score on the PRAXIS examination in school guidance and counseling.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 4. Ancillary School Service Certificates

Subchapter A. General Ancillary School Certificates

§405. Counselor K-12 (Counselor in a School Setting)

A. Valid for five years. Universities that plan to admit new candidates into school counseling programs after December 31, 2012 must provide the Louisiana Department of Education by January 1, 2013 with a copy of the application submitted to the Council for Accreditation of Counseling and Related Educational Program (CACREP) for national accreditation. Universities that submit CACREP applications must be CACREP accredited by July 1, 2015 to admit new candidates into school counseling programs after June 30, 2015. Universities that do not submit CACREP applications by January 1, 2013 may not admit new candidates into their school counseling programs after December 31, 2012. Candidates who are already in the process of working toward certification under the previous guidelines will be given until June 30, 2017 to complete all coursework. Individuals who have completed all courses and degree requirements for the previous policy by June 30, 2017 will be allowed to have this endorsement added to their certificates.

B. Eligibility requirements:

1. completion of a standards based master's degree program in school counseling from a regionally accredited college or university approved by the Council for Accreditation of Counseling and Related Educational Program (CACREP);

2. practicum/internship requirements:

a. a practicum in school counseling to include 100 contacts hours in a school setting; or

b. an internship in school counseling to include 600 contact hours in a school setting;

3. completion of the PRAXIS examination in school guidance and counseling (0420).

C. Renewal Requirements. For purposes of maintaining a valid counseling endorsement, any school counselor receiving certification after July 1, 2013 is required to either provide verification of a current licensed professional counselor (LPC) license or complete 150 hours of continuing learning units (CLUs) over a five-year time period that are consistent with the individual professional growth plan (IPGP). These CLUs must be standards based and follow the models of the American School Counseling Association (ASCA) and CACREP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1807 (October 2006), amended LR 38:

Chapter 6. Endorsements to Existing Certificates
Subchapter C. All Other Teaching Endorsement Areas
§659. Counselor K-12 (Counselor in a School Setting)

A. Universities that plan to admit new candidates into school counseling programs after December 31, 2012 must provide the Louisiana Department of Education by January 1, 2013 with a copy of the application submitted to the Council for Accreditation of Counseling and Related Educational Program (CACREP) for national accreditation. Universities that submit CACREP applications must be CACREP accredited by July 1, 2015 to admit new candidates into school counseling programs after June 30, 2015. Universities that do not submit CACREP applications by January 1, 2013 may not admit new candidates into their school counseling programs after December 31, 2012. Candidates who are already in the process of working toward certification under the previous guidelines will be given until June 30, 2017 to complete all coursework. Individuals who have completed all courses and degree requirements for the previous policy by June 30, 2017 will be allowed to have this endorsement added to their certificates.

B. Eligibility requirements:

1. valid Louisiana teaching certificate;
2. completion of a standards based master's degree program in school counseling from a regionally accredited college or university approved by the Council for Accreditation of Counseling and Related Educational Program (CACREP);
3. practicum/internship requirements:
 - a. a practicum in school counseling to include 100 contacts hours in a school setting; or
 - b. an internship in school counseling to include 600 contact hours in a school setting;
4. completion of the PRAXIS examination in school guidance and counseling (0420).

C. Renewal Requirements. For purposes of maintaining a valid counselor endorsement, any school counselor receiving certification after July 1, 2013 is required to either provide verification of a current License Professional Counselor (LPC) license or complete 150 hours of continuing learning units (CLUs) that are consistent with the Individual Professional Growth Plan (IPGP) over a five-year time period. These CLUs must be standards based and follow the models of the American School Counseling Association (ASCA) and CACREP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1819 (October 2006), amended LR 33:1618 (August 2007), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**
**RULE TITLE: Bulletin 746—Louisiana Standards for
State Certification of School Personnel—Counselor K-12**

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

The proposed policy revision will require the completion of a master's degree program from a regionally accredited college or university which has met the Council for Accreditation of Counseling and Related Educational Program (CACREP) guidelines for a standards based program in school counseling. The program must include a practicum/internship in school counseling, and the individual must receive a passing score on the PRAXIS examination in School Guidance and Counseling. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

Teachers who choose to add this endorsement to their teaching certificate will incur costs for graduate level coursework and PRAXIS examinations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1203#020

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Expenditures (LAC 28:XLIII.133)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*, Subpart 1. Regulations for Students with Disabilities: §133. Expenditures. The proposed rules implement Act 515 of the 2010 Regular Legislative Session, the School Choice Pilot Program for Certain Students with Exceptionalities. The proposed rules clarify the requirements for participating school and student eligibility. The policy clarifies the obligations of participants and gives clear timelines for reporting the entrance, exit, and transfer of students at participating schools. The proposed policy also clarifies the financial obligations of the Department of Education and participating schools and families. This includes a requirement that schools not increase tuition after the school submits eligibility documentation to the state as part of the eligibility process conducted by the state. The proposed policy ensures payments to participating schools are aligned with the same schedule for public schools receiving money from the state.

Title 28

EDUCATION

Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

Subpart 1. Regulations for Students with Disabilities

Chapter 1. State Eligibility

Subchapter F. Students with Disabilities Enrolled by their Parents in Private Schools

§133. Expenditures

A. - D. ...

E. School Choice Pilot Program for Certain Students with Exceptionalities

1. Introduction

a. The purpose of the school choice pilot program for certain students with exceptionalities, hereafter referred to as the “program,” shall be to provide certain students with exceptionalities the opportunity to attend schools of their parents’ choice that provide educational services specifically tailored to address said students’ specific needs.

2. Definitions

a. *Approved Non-public School*—

i. non-public school that meets the following criteria:

(a). approved, provisionally approved, or probationally approved by the state Board of Elementary and Secondary Education pursuant to R.S. 17:11 and according to *Brumfield, et al. v. Dodd, et al.* 425 F. Supp. 528.

b. *Continuous Attendance*—

i. student is enrolled and actively attending school.

c. *Educational Certificate*—

i. award amount allocated to an eligible school on behalf of an eligible student by the Louisiana Department of Education that shall be equivalent to 50 percent of the per pupil allocation of state funds to the city, parish, or other local public school district in which the eligible student is residing for that school year, but shall not exceed the amount of tuition charged by the eligible nonpublic school.

d. *Enrollment Status*—

i. the category of enrollment at an eligible non-public school as evidenced by attendance and registration.

e. *Entrance Requirements*—

i. requirements for entry into a participating non-public school.

f. *IEP*—

i. a plan that provides the basis for programming for students with exceptionalities as specified in Bulletin 1530.

g. *Transfer*—

i. a change in enrollment status resulting from the movement of an eligible student from one approved non-public school to another eligible non-public school during the current school year.

h. *Tuition*—

i. the total costs associated with one year of enrollment at an eligible non-public school as assessed to similarly situated students.

i. *Services Plan*—

i. a plan that provides the basis for services programming for students with exceptionalities as specified in Bulletin 1530.

3. Eligibility

a. Student Eligibility

i. A student shall be eligible to participate in the program after submission of an application to the Louisiana Department of Education not later than February 10 of the year prior to the year of eligibility and in accordance with the following requirements:

(a). evaluation of the student by a local education agency as defined in R.S. 17:1942 and resulting in a determination that services are required for one of the following exceptionalities:

(i). autism;

(ii). mental disability;

(iii). emotional disturbance;

(iv). developmental delay;

(v). other health impairment;

(vi). specific learning disability; or

(vii). traumatic brain injury;

(b). having an individual education plan or a services plan for any service excluding gifted and talented as defined in R.S. 17:1942 and in accordance with Title 34 of the Code of Federal Regulations Part 300.37;

(c). residence within an eligible parish in accordance with Act 515;

(d). eligibility to attend public school and enter into kindergarten or grades 1-8.

ii. An eligible student may be expelled from the school in accordance with the school’s discipline policies or may be disqualified from enrollment if the student is no longer eligible for the program as determined by the department.

b. School Eligibility

i. A non-public school shall be eligible to enroll students through the program if it:

(a). is an approved non-public school, as determined by the state Board of Elementary and Secondary Education pursuant to R.S. 17:11 and has been so approved for the school year prior to the school's participation in the program; and

(b). has provided needed educational services to students with exceptionalities, as defined in R.S. 17:1942, excluding students deemed to be gifted or talented, for at least two years; and

(c). has provided needed services to students by teachers holding appropriate special education certification or other appropriate education and training as defined in Bulletin 1706; and

(d). provides services and instruction in accordance with a student's individual education plan and/or services plan.

ii. A non-public school seeking eligibility for this program shall provide the Louisiana Department of Education with the following documents in accordance with timelines determined by the Louisiana Department of Education:

(a). a list of student exceptionalities that the school is able and willing to serve, as defined in R.S. 17:1942;

(b). an itemized tuition calculation including all costs for special education services by specific disability as listed in this section of Bulletin 1706 and all mandatory fees for the upcoming year, as well as the previous year.

iii. Any non-public school that does not meet these requirements shall not receive approval for program participation.

c. Eligible School Obligations

i. Once a non-public school is determined to be eligible for the program it shall provide the following assurances and information, as well as meet the following deadlines in order to retain eligibility:

(a). determination of the number of eligible students it will accept in any year of program participation and establishment of criteria for enrollment of students;

(b). no student seeking to enroll and participate in the program shall be required to take an entrance exam;

(c). provision of all rules, policies, and procedures of the school, including but not limited to academic policies and disciplinary policies and procedures, to the parent or guardian of an eligible student;

(d). completion of student enrollment by April thirtieth of the school year prior to the non-public school's participation in the program;

(e). submission to the Louisiana Department of Education of a list of all eligible students conditionally enrolled in the school by June first of the year prior to the program year.

4. Finances

a. Parental Obligations

i. Parents of eligible students shall declare all other federal, state, local, and private financial aid to the student for educational purposes to the Louisiana Department of Education.

ii. Parents of eligible students shall be responsible for paying any outstanding tuition obligations regardless of the educational certificate award, except for undisbursed educational certificate funds.

b. School Obligations

i. Any eligible school shall declare all other federal, state, local, and private financial aid to eligible students for educational purposes to the Louisiana Department of Education.

ii. Any eligible school shall not increase tuition above itemized calculations provided to the Louisiana Department of Education by the school during eligibility determination.

iii. Any eligible school shall not require parents to pay for undisbursed educational certificate funds, unless student becomes ineligible for the pilot program but remains at the school.

iv. Any eligible school shall be subject to an audit of educational certificate funds by the Department of Education.

c. Louisiana Department of Education Obligations

i. The Louisiana Department of Education shall determine the total amount of the educational certificate after declaration by both parent and school of all other financial aid, subtracting any such aid from the maximum educational certificate value.

ii. The Louisiana Department of Education shall disburse educational certificate funds in four separate payments to the eligible school in the months of September, November, February, and May.

iii. Payments shall be based on per pupil count dates as determined by the Louisiana Department of Education. The count dates used are the fifteenth of September, November, February, and the fifth of May.

iv. Should any of the count dates occur on a weekend, the count shall take place no later than the next business day.

v. Should an eligible student begin attending an eligible non-public school after the start of the school year, the Louisiana Department of Education shall determine the method of disbursing the appropriate educational certificate amount.

5. Notifications of Change

a. School Notification Requirements

i. Any participating school shall notify the Louisiana Department of Education in writing within 10 days when there are changes in eligibility requirements including but not limited to: tuition, enrollment status, transfer, IEP, continuous attendance, and other types of financial aid as defined in this bulletin.

6. Student Records

a. Any participating school shall make all program participants' records available upon request by the Louisiana Department of Education.

7. Re-enrollment

a. Each eligible school and student shall submit a re-enrollment application to continue participation in the pilot program the following school year. If either the school or student loses eligibility, another initial application for the pilot program may be submitted to the Louisiana Department of Education.

8. Lottery

a. The Louisiana Department of Education shall hold a lottery for eligible, non-continuing students prior to the start of the school year, if demand for the pilot program exceeds available slots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:2041 (October 2008), amended LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Expenditures

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

The proposed rules implement Act 515 of the 2010 Regular Legislative Session, the School Choice Pilot Program for Certain Students with Exceptionalities. The proposed rules clarify the requirements for a participating school, student eligibility and the obligations of participants. The two-year

pilot program operating in parishes with populations in excess of 190,000 persons, according to the most recent federal decennial census, provides certain students with exceptionalities the opportunity to attend nonpublic schools of their parents' choice that provide educational services specifically tailored to address specific needs of students. The Department of Education will award educational certificates to eligible students which are equivalent to 50% of the state per pupil allocation in the Minimum Foundation Program formula of the school district in which the student is residing for that school year, but will not exceed the amount of tuition charged by the eligible nonpublic school. The Department of Education was appropriated \$1,896,505 in state general funds in FY 12 to pay for educational certificates for approximately 1,000 students to go towards tuition at the nonpublic school. If a student participating in the program transfers from a public school, the student will no longer be counted in the Minimum Foundation Program and the local school district will not be responsible for educating that student in a public school. There will be a cost of \$164 associated with publication of the proposed rule change in the *Louisiana Register*.

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

There will be no effect on revenue collections at the state or local government level.

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

Parents of students participating in the pilot program are responsible for paying any outstanding tuition obligations regardless of the educational certificate award, except for undisbursed educational certificate funds. Any eligible school shall not require parents to pay for undisbursed educational certificates, unless the student becomes ineligible for the pilot program but remains at the school.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed bulletin revision will have no effect on revenue collections at the state or local government level.

Beth Scioneaux
Deputy Superintendent
1203#021

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Regulations for Students with Disabilities (LAC 28:XLIII.543)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act: Subpart 1. Regulations for Students with Disabilities, §543. Restrictions on the Use of Seclusion or Physical Restraint*. The Rule was developed in response to Act 328 of the 2011 Regular Session of the Louisiana Legislature. The Act requires the state Board of Elementary and Secondary Education to approve rules related to the use of seclusion and restraint for students with exceptionalities in local education agencies in the state. The Rule includes definitions, how seclusion will be used and who will determine the use of seclusion. The Rule defines the

attributes of a seclusion room. The use of physical restraint is described. Restrictions on the use of seclusion and physical restraint are included in the Rule. Notification of parents or legal guardians and the school district's director or supervisor of special education is required when seclusion or restraint is used. Documentation of the use of seclusion or restraint is necessary, and if a student is involved in five incidents in a school year, the student's individualized education plan team shall review and revise the plan if necessary. School districts are required to adopt written guidelines and procedures concerning reporting requirements, notification to parents and school officials and explanations or methods of physical restraint and school employee training. The local school district will report instances where seclusion or physical restraint are used to the Department of Education, which will maintain a database of all reported instances of seclusion and physical restraint.

Title 28

EDUCATION

Part XLIII. Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act

Subpart I. Regulations for Students with Disabilities

Chapter 5. Procedural Safeguards

Subchapter C. Seclusion and Physical Restraint

§543. Restrictions on the Use of Seclusion or Physical Restraint

A. - E. ...

F. The parent or other legal guardian of a student who has been placed in seclusion or physically restrained shall be notified as soon as possible. The school shall document all efforts, including conversations, phone calls, electronic communications, and home visits, to notify the parent of a student who has been placed in seclusion or physically restrained.

1. The student's parent or other legal guardian shall also be notified in writing, within 20 hours, of each incident of seclusion or physical restraint. Such notice shall include the reason for such seclusion or physical restraint, the procedures used, the length of time of the student's seclusion or physical restraint, and the names and titles of any school employee involved.

G. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.17:7(5)(b) and 17:416.21.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? Lacks sufficient information to determine.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? Lacks sufficient information to determine.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? Lacks sufficient information to determine.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Lacks sufficient information to determine.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act—Regulations for Students with Disabilities

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

There are minimal estimated costs to state or local governmental units. The rule does not mandate training. An existing database used by local education agencies and the Louisiana Department of Education will be configured with current resources to capture the data required for the rule. The costs associated with this rule may result in expenses to notify parents or legal guardians and local supervisors or directors of special education of the incidents. It is estimated that each school district in the state may expend an additional \$100 per year to implement the rule. If seclusion rooms need to be constructed or renovated, the school district will have some costs. However, the rule does not require the use of seclusion rooms. It authorizes and stipulates the conditions of usage if the district employs the use of seclusion rooms.

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

There are no estimated effects on revenue collections of state or local governmental units. No revenue is collected as a result of this rule.

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

There are minimal costs to directly affected persons, local school districts. There are no costs to non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment. School districts will most likely use existing

personnel to implement the rule and many have staff who currently implement seclusion and restraint for students with exceptionalities.

Beth Scioneaux
Deputy Superintendent
1203#022

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Finance and Property, Minimum Foundation Program,
Add-on Students/Units (LAC 28:I.1107)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement revisions to the *Louisiana Administrative Code*, Title 28, Part I, §1107.D. MFP: Add-on Students/Units. The *Louisiana Administrative Code*, Title 28, Part I, Section 1107, Subsection D. contains the required data for establishing the data sets used in determining the add-on students/units. A technical amendment is required to the definition for at-risk students to align virtual schools students with the MFP resolution. Currently, the required data to determine an at-risk student is a free or reduced lunch application. The Rule will now define an at-risk student as a student who is qualified to participate in the federal free and reduced price breakfast and lunch program, instead of a student who has an approved application to participate. This is necessary because low-income students enrolled in virtual schools do not fill out free or reduced lunch forms because they do not eat lunch at the school. This change will allow the MFP formula to calculate the add-on students/units for at-risk students correctly.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 11. Finance and Property

§1107. Minimum Foundation Program

A. - C.1.b.x. ...

D. MFP: Add-on Students/Units

1. Required Data. For purposes of establishing the data sets used in determining the add-on students/units, the following will be adhered to.

a. At-risk student count shall be determined by the number of students whose family income is at or below income eligibility guidelines or other guidelines as provided by BESE and the number of students identified as English language learners (ELL) that were not included based on income eligibility guidelines. The current income eligibility guidelines include those students qualifying to participate in the federal free and reduced price breakfast and lunch program. The fall count is determined by the number of students qualifying for the free and reduced price lunch program and those ELL students not included on income eligibility guidelines during the month of October as reported in the Student Information System (SIS). For any additional required count date(s), the at-risk student count will be those qualifying for free and reduced lunch and those

ELL students not included on income eligibility guidelines as reported in SIS, as of that count date.

b. - e. ...

AUTHORITY NOTE: Promulgated in accordance with Art. VIII §13 and R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:425 (March 2008), amended LR 37:1142 (April 2011), LR 37:3219 (November 2011), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Finance and Property, Minimum Foundation Program, Add-on Students/Units

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

Louisiana Administrative Code, Title 28, Part I, Section 1107.D contains the Minimum Foundation Program (MFP) Student Membership Definition. A technical change is required to the definition for at-risk students to align virtual schools

students with the MFP resolution. This action will have no statewide fiscal effect other than an estimated cost of \$165 for advertising in the *Louisiana Register*.

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

This action will have no effect on revenue collections of state and local government units.

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

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Catherine R. Pozniak
Executive Director
1203#023

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for
Nonpublic School Administrators
(LAC 28:LXXIX.115, 705, 707, 905, 2103, and 3303)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §115. Pre-Kindergarten/Kindergarten, §705. Length of the School Day, §707. Class Size and Ratio, §905. Age Requirements, §2103. Minimum Time Requirements, and §3303. Definitions. The revisions are necessary to align current policies with the new policies in Chapter 30, which was recently added. Chapter 30 provides the rules and regulations to protect the health and safety of three-year-old children who attend prekindergarten at an approved nonpublic elementary school, as required by Act 102 of the 2011 Regular Legislative Session. The changes to Sections 115, 705, 707, 905, 2103, and 3303 reflect the changes to pre-kindergarten policy, length of the school day, class size and ratio, age requirements, minimum time requirements, and definitions, as contained in the new regulations for three-year-old students.

Title 28 EDUCATION

Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators— Programs of Study

Chapter 1. Operation and Administration

§115. Pre-Kindergarten/Kindergarten

A. The local educational governing authority shall have the option of establishing a pre-kindergarten and/or kindergarten program on a half-day or full-day schedule.

B. The pre-kindergarten program shall be listed on the annual school report when operated as a developmental program within the total school program or when operated as a separate program.

C. The term *pre-kindergarten* includes developmental programs for children ages 3-4, the minimum age being three by September 30 of the school year in which the student enters pre-kindergarten.

D. Pre-kindergarten programs may be operated as part of an approved elementary school program in conjunction with other grades or may be operated solely as an approved pre-kindergarten program. These approved programs are considered to be elementary schools.

E. Non-public schools are not required to offer pre-kindergarten programs nor are children required to attend these programs.

F. Any other program which operates in a school as a childcare program shall follow the day care standards as prescribed by the appropriate state agency and is not to be listed on the annual school report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2343 (November 2003), amended LR 31:3073 (December 2005), LR 36:2848 (December 2010), LR 38:

Chapter 7. Scheduling

§705. Length of the School Day

A. The minimum instructional day for a full-day pre-kindergarten and/or kindergarten program shall be 330 minutes and for a one-half day pre-kindergarten and/or kindergarten program, the minimum instructional day shall be 165 minutes.

B. For grades 1-12, the minimum school day shall include 330 minutes of instructional time exclusive of recess, lunch, and planning periods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2347 (November 2003), amended LR 31:3077 (December 2005), LR 38:

§707. Class Size and Ratio

A. The maximum enrollment allowed in any class or section shall not exceed 35 students except in certain activity classes such as physical education, music, art, etc.

B. The class size for pre-kindergarten developmental programs for four year-olds shall not exceed 20 children for one teacher. Schools that choose to use the assistance of a full-time aide may have a maximum of 30 children per class.

C. The class size for pre-kindergarten developmental programs for three year-olds shall not exceed 13 children for one teacher. Schools that choose to use the assistance of a full-time aide may have a maximum of 20 children per class.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2347 (November 2003), amended LR 31:3078 (December 2005), LR 38:

Chapter 9. Student Services

§905. Age Requirements

A. The minimum age for pre-kindergarten shall be age three by September 30 of the year in which the student enters pre-kindergarten.

B. The minimum age for kindergarten shall be one year younger than the age requirement for that child to enter first grade.

C. Each school system and/or independent school may adopt by rule and enforce ages for entrance into first grade in school. It is recommended that a child entering first grade be six years of age on or before September 30 of that school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2348 (November 2003), amended LR 31:3078 (December 2005), LR 36:2848 (December 2010), LR 38:

Chapter 21. Curriculum and Instruction

Subchapter B. Elementary Program of Studies

§2103. Minimum Time Requirements

A. Pre-Kindergarten/ Kindergarten

1. The pre-kindergarten, and/or kindergarten elementary school grades should be planned to meet the developmental needs of young children and should be informal in nature, with teacher-directed and student-initiated activities.

A.2.a. - B.6.m.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6 (A)(10), (11), (15); R.S. 17:7(6); R.S. 17:10; R.S. 17:22(6); R.S. 17:391.1-391.10; R.S. 17:411.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2349 (November 2003), amended LR 31:3080 (December 2005), LR 34:229 (February 2008), LR 36:2848 (December 2010), LR 38:

Chapter 33. Glossary

§3303. Definitions

* * *

Early Childhood Program—Repealed.

* * *

Elementary School—a school composed of any span of grades pre-kindergarten, and/or kindergarten through the eighth grade.

* * *

Pre-Kindergarten—developmental programs for children ages 3-4, the minimum age being three by September 30 of the school year in which the student enters pre-kindergarten.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6; R.S. 17:7.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 34:230 (February 2008), amended LR 36:2848 (December 2010), LR 38:

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the state board office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.

2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.

5. Will the proposed Rule affect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Small Business Statement

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., April 19, 2012, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators

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

The revisions to Sections 115, 705, 707, 905, 2103, and 3303 of *Bulletin 741: Louisiana Handbook for Nonpublic School Administrators* are necessary to align current policies with the new policies in Chapter 30 which was recently added. Chapter 30 provides the rules and regulations to protect the health and safety of three-year-old children who attend prekindergarten at an approved nonpublic elementary school as required by Act 102 of the 2011 Regular Legislative Session. The changes to Sections 115, 705, 707, 905, 2103, and 3303 reflect the changes to pre-kindergarten policy, length of the school day, class size and ratio, age requirements, minimum time requirements and definitions as contained in the new regulations for three-year-old students. These changes will not result in an increase in costs or savings to state or local governmental units.

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

There will be no effect on revenue collections of state or local governmental units.

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

Nonpublic schools which choose to offer a prekindergarten program for three-year-olds may experience an increase in costs associated with the hiring of a qualified teacher and the hiring of a paraprofessional to meet the lower pupil teacher ratio. It is not possible to estimate the increased cost because it will depend on the school's salary schedule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1203#019

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

**PM_{2.5} Increments, Significant Impact Levels and Significant
Monitoring Concentration
(LAC 33:III.509)(AQ328ft)**

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 gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.509 (AQ328ft).

This Rule is identical to federal regulations found in 75 FR 202 pages 64864-64907, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3985 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the Rule. This Rule will be promulgated in accordance with the procedures in R.S. 49:953(F)(3) and (4).

This action incorporates the provisions of the Environmental Protection Agency's final rule entitled "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5})—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864, October 20, 2010) into the Louisiana air regulations. The New Source Review (NSR) provisions of the Clean Air Act (CAA) are a combination of air quality planning and air pollution control technology program requirements for new and modified stationary sources of air pollution. In brief, section 109 of the CAA requires EPA to promulgate primary National Ambient Air Quality Standards (NAAQS) to protect public health and secondary NAAQS to protect public welfare. Once EPA has set these standards, states must develop, adopt, and submit to the agency for approval state implementation plans (SIPs) that contain emission limitations and other control measures to attain and maintain the NAAQS and to meet the other requirements of section 110(a) of the CAA.

Part C of Title I of the CAA contains the requirements for a component of the major NSR program known as the PSD program. This program sets forth procedures for the preconstruction review and permitting of new and modified major stationary sources of air pollution located in areas meeting the NAAQS ("attainment" areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment ("unclassifiable" areas).

Louisiana has a SIP-approved PSD program. In the aforementioned Rule:

[W]e [EPA] are establishing the final PM_{2.5} increments as minimum program elements for all State PSD programs. Accordingly, states must

submit for EPA's approval revised SIPs that incorporate the final PM_{2.5} increments or alternative measures that can be demonstrated to EPA's satisfaction to provide an equivalent level of protection as the PM_{2.5} increments. In accordance with section 166(b) of the Act, we are requiring states to submit revised implementation plans to EPA for approval within 21 months of promulgation, that is, by July 20, 2012.

75 FR 64898

The basis and rationale for this Rule are to incorporate PSD increments, SILs, and the SMC for PM_{2.5} into LAC 33:III.509. This Rule meets an exception listed in R.S. 30:2019(D)(2) 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 III. Air

Chapter 5. Permit Procedures

§509. Prevention of Significant Deterioration

A. - A.5. ...

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

Baseline Area—

a. any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than the following amounts of the pollutant for which the minor source baseline date is established: 1 g/m³ (annual average) for SO₂, NO₂, or PM₁₀; or 0.3 g/m³ (annual average) for PM_{2.5};

b. - c. ...

Baseline Date—

a. *Major Source Baseline Date—*

i. in the case of particulate matter (PM₁₀) and sulfur dioxide, January 6, 1975;

ii. in the case of nitrogen dioxide, February 8, 1988; and

iii. in the case of PM_{2.5}, October 20, 2011.

b. *Minor Source Baseline Date—* the earliest date after the trigger date on which a major stationary source or a major modification subject to this Section submits a complete application under the relevant regulations. The trigger date is:

i. in the case of particulate matter (PM₁₀) and sulfur dioxide, August 7, 1977;

ii. in the case of nitrogen dioxide, February 8, 1988; and

iii. in the case of PM_{2.5}, October 20, 2011.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

i. the area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the Clean Air Act for the pollutant on the date of its complete

application under 40 CFR 52.21 or under regulations approved in accordance with 40 CFR 51.166; and

c.ii. - d. ...

* * *

C. Ambient Air Increments. In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the following.

Pollutant	Maximum Allowable Increase (Micrograms per Cubic Meter) ¹
Class I	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	1
PM _{2.5} , 24-hr maximum	2
PM ₁₀ , annual arithmetic mean	4
PM ₁₀ , 24-hr maximum	8
Sulfur dioxide:	
Annual arithmetic mean	2
24-hr maximum	5
3-hr maximum	25
Nitrogen dioxide:	
Annual arithmetic mean	2.5
Class II	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	4
PM _{2.5} , 24-hr maximum	9
PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	512
Nitrogen dioxide:	
Annual arithmetic mean	25
Class III	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	8
PM _{2.5} , 24-hr maximum	18
PM ₁₀ , annual arithmetic mean	34
PM ₁₀ , 24-hr maximum	60
Sulfur dioxide:	
Annual arithmetic mean	40
24-hr maximum	182
3-hr maximum	700
Nitrogen dioxide:	
Annual arithmetic mean	50

¹ For any period other than an annual period, the applicable maximum allowable increase may be exceeded during one such period per year at any one location.

D. - I.4. ...

5. The administrative authority may exempt a stationary source or modification from the requirements of Subsection M of this Section, with respect to monitoring for a particular pollutant, if:

a. the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts.

Carbon monoxide	575 µg/m ³	8-hour average
Nitrogen dioxide	14 µg/m ³	annual average
Particulate matter	10 µg/m ³ of PM ₁₀ 4 µg/m ³ of PM _{2.5}	24-hour average 24-hour average
Sulfur dioxide	13 µg/m ³	24-hour average

Ozone	No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would require the performance of an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 µg/m ³	3-month average
Fluorides	0.25 µg/m ³	24-hour average
Total reduced sulfur	10 µg/m ³	1-hour average
Hydrogen sulfide	0.2 µg/m ³	1-hour average
Reduced sulfur compounds	10 µg/m ³	1-hour average

I.5.b. - J.4. ...

K. Source Impact Analysis

1. The owner or operator of the proposed source or modification shall demonstrate that allowable emission increases from the proposed source or modification, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, would not cause or contribute to air pollution in violation of:

a. any national ambient air quality standard in any air quality control region; or

b. any applicable maximum allowable increase over the baseline concentration in any area.

2. Significant Impact Levels. For purposes of PM_{2.5}, the demonstration required in Paragraph K.1 of this Section is deemed to have been made if the emissions increase from the new stationary source alone or from the modification alone would cause, in all areas, air quality impacts less than the following amounts.

Pollutant	Micrograms per Cubic Meter
Class I	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	0.06
PM _{2.5} , 24-hr maximum	0.07
Class II	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	0.3
PM _{2.5} , 24-hr maximum	1.2
Class III	
Particulate matter:	
PM _{2.5} , annual arithmetic mean	0.3
PM _{2.5} , 24-hr maximum	1.2

L. - P.4. ...

5. Class I Variances. The owner or operator of a proposed source or modification may demonstrate to the federal land manager that the emissions from such source or modification would have no adverse impact on the air quality-related values of any such lands, including visibility, notwithstanding that the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations that would exceed the maximum allowable increases for a Class I area. If the federal land manager concurs with such demonstration and he so certifies, the administrative authority, provided that the applicable requirements of this Section are otherwise met, may issue the permit with such emission limitations as may be necessary to ensure that emissions of sulfur dioxide,

particulate matter, and nitrogen oxides would not exceed the following maximum allowable increases over minor source baseline concentration for such pollutants.

Pollutant	Maximum Allowable Increase (Micrograms per Cubic Meter)
Particulate matter:	
PM _{2.5} , annual arithmetic mean	4
PM _{2.5} , 24-hr maximum	9
PM ₁₀ , annual arithmetic mean	17
PM ₁₀ , 24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide:	
Annual arithmetic mean	25

P.6. - AA.15.b. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:1600 (September 2006), LR 32:1843 (October 2006), LR 36:2556 (November 2010), LR 37:1148 (April 2011), repromulgated LR 37:1389 (May 2011), amended LR 37:1570 (June 2011), repromulgated LR 37:2146 (July 2011), amended LR 38:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ328ft. Such comments must be received no later than April 25, 2012, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ328ft. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Public Hearing

A public hearing will be held on April 25, 2012 at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot, at the address given above or at (225) 219-3985. Two hours of free parking are allowed in the Galvez garage with a validated parking ticket.

Herman Robinson, CPM
Executive Counsel

1203#009

NOTICE OF INTENT

Office of the Governor Division of Administration Office of State Purchasing

Reverse Auctions (LAC 34:I.Chapter 6)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Division of Administration, Office of State Purchasing, proposes to adopt Chapter 6, Reverse Auctions, to allow for a competitive online electronic bidding procedure when advantageous and to regulate the overall process.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part I. Purchasing

Subpart 1. Central Purchasing Procedures

Chapter 6. Reverse Auctions

§601. Definition

A. For the purpose of this Section, *using agency* means the Office of State Purchasing using the reverse auction process on its own behalf or on behalf of other state agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

§603. Application

A. Where the using agency utilizes the reverse auction process on behalf of a single state agency, the head of the state agency requesting a reverse auction shall provide:

- reasons that the best interest of the state would be served and that electronic online bidding is more advantageous than other procurement methods;
- specifications and terms and conditions to be used for the procurement.

B. When the using agency uses the reverse auction process on its own behalf or on behalf of multiple state agencies, the director of state purchasing shall be considered the department head of the using agency.

C. Vendors shall register before the opening date and time, and as part of the registration, shall agree to any terms and conditions and other requirements of the solicitation.

D. Vendors and/or products shall be prequalified prior to placing bids and only bidders who are prequalified will be allowed to submit bids.

1. The prequalification criteria shall be prescribed in the solicitation.

2. The prequalification period shall be announced in the solicitation.

3. The prequalification period shall end 10 days prior to the beginning of the auction.

4. Bidders shall be notified as to whether they have been prequalified in writing at least seven days prior to the beginning of the auction.

5. When applicable, prequalified products for a particular solicitation shall be announced on the state's internet-based system for posting vendor opportunities seven days prior to the beginning of the auction.

6. Any bidder aggrieved by the pre-qualification process shall have the right to protest the solicitation in accordance with the provisions of R.S. 39:1671.

E. The solicitation shall designate an opening date and time and the closing date and time. The closing date and time may be fixed or remain open depending on the nature of the item being bid.

1. Online reverse auctions shall last no less than one hour.

F. At the opening date and time, the using agency shall begin accepting online bids and continue accepting bids until the bid is officially closed. Registered bidders shall be allowed to lower the price of their bid below the lowest bid posted on the Internet until the closing date and time.

G. Bidders' identities shall not be revealed during the bidding process; only the successively lower prices, ranks, scores, and related bid details shall be revealed.

H. All bids shall be posted electronically and updated on a real-time basis. All prices must be received in the state's system by the announced closing time regardless of what time it was submitted by the vendor.

I. The using agency shall retain the right to cancel the solicitation if it determines that it is in the agency's or the state's best interest.

J. The using agency shall retain its existing authority to determine the criteria that shall be used as a basis for making awards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

§605. Addenda Modifying a Reverse Auction

A. Addenda will be issued in accordance with §505 of these rules.

B. It is the responsibility of the bidder to obtain any solicitation amendment(s) if the solicitation and addenda are posted on the state's internet-based system for posting bid opportunities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

§607. Price Submittals

A. Bidders may submit multiple prices during the event. The lowest price offered will become the price portion of the bid response.

B. The preference provisions of R.S. 39:1595, 1595.1, 1595.2, 1595.3, 1595.6, and 1595.7 shall apply to the reverse auction process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

§609. Withdrawal of Bids

A. Withdrawal of bids will be handled in accordance with §521 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

§611. Tie Bids

A. In the event that multiple bidders submit identical prices for the same goods or services, the bid received first will be considered to be the lowest. Any other identical bids received later will be considered in the order received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

§613. Rejected Bids

A. The awarding authority may reject any bid, in whole or in part, if any of the following occur:

1. bids offered for materials, supplies, services, products, or equipment that are not in compliance with the requirements, specifications, terms or conditions as stated in the reverse auction;

2. the price of the lowest responsive and responsible bid exceeds the amount budgeted for the procurement;

3. it is determined that awarding any item is not in the best interest of the agency/department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

§615. Public Viewing of Auction Event

A. The public may view the internet auction event which will be conducted such that the names of the bidders will not be disclosed until after the completion of the auction, at which time the event record will be available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

§616. Security

A. All reverse auctions shall be conducted in accordance with the electronic security requirements of the Office of Information Technology.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to George Grazioso, Office of State Purchasing, P.O. Box 94095, Baton Rouge, LA 70804-9095. He is responsible for responding to inquiries regarding this proposed Rule. All comments must be received by April 10, 2012, by close of business.

Denise Lea
Assistant Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Reverse Auctions

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

Pursuant to Act 210 of the 2011 Regular Legislative Session relative to reverse auctions, the proposed administrative Rules may result in an overall net decrease in state expenditures depending upon the costs associated with the contractor providing the auctions on behalf of the state. A reverse auction is a structured bid process that links web-based technology with traditional bidding methods to obtain lower prices for the customer.

The proposal will likely result in an indeterminable savings by receiving lower prices through an interactive real time internet auction for products that are readily available in the market place. Other states that currently utilize reverse auctions have reported savings of approximately 2 percent to 37 percent depending upon the commodity. Overall, the acceptance of businesses to participate in reverse auctions will largely determine the impact on state expenditures. The greater the utilization by businesses, the more likely that competitive forces will reduce costs. However, any savings realized will be reduced by indeterminable costs relative to a third party interactive online internet provider conducting the reverse auction in a real time environment for State Purchasing. Other states that conduct reverse auctions contract the process out to a vendor, which is paid from a 3 percent to 5 percent fee included within the sale price of the commodities being auctioned or the contractor is paid from a negotiated rate in the agency's overall budget.

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

There should be no effect on revenue collections of state or local governmental units.

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

There is no anticipated impact on businesses participating in reverse auctions. The reverse auction process merely provides a different framework by which business decisions are made and should not impact the final outcome for businesses that participate in this process.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rules may increase competition among various businesses providing commodities to the state. To the extent businesses choose to participate in the reverse auction process, competition will likely occur among those businesses to provide the lowest price.

Denise Lea
Assistant Commissioner
1203#073

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Home and Community-Based Services Providers
Minimum Licensing Standards
Direct Service Worker Exemption (LAC 48:I.5001)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.5001 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.2. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with the directives of Act 839, the Department of Health and Hospitals, Bureau of Health Services Financing revised and combined the existing licensing standards for providers of adult day care services, family support services, personal care services, respite care services, and supervised independent living services, and adopted minimum licensing standards for providers of substitute family care and supported employment services in order to establish comprehensive home and community-based services (HCBS) provider licensing standards and a single HCBS license (*Louisiana Register*, Volume 38, Number 1). The department now proposes to amend the provisions of the January 2012 Rule to exempt individual direct service workers from the HCBS providers licensing requirements when they contract directly with the statewide management organization in the Louisiana behavioral health partnership to provide respite services.

Title 48

PUBLIC HEALTH—GENERAL

Part 1. General Administration

Subpart 3. Licensing and Certification

Chapter 50. Home and Community-Based Services Providers Licensing Standards

Subchapter A. General Provisions

§5001. Introduction

A. - C.7. ...

D. The following entities shall be exempt from the licensure requirements for HCBS providers:

1. - 3. ...

4. staffing agencies that supply contract workers to a health care provider licensed by the department;

5. any person who is employed as part of a departmentally authorized self-direction program; and

a. ...

6. any individual direct service worker providing respite services pursuant to a contract with the Statewide

Management Organization (SMO) in the Louisiana Behavioral Health Partnership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2120.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:63 (January 2012), amended LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, April 25, 2012 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Providers, Minimum Licensing Standards, Direct Service Worker Exemption

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$328 (SGF) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections to state or local governmental units.

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

This rule proposes to amend the provisions governing the licensing standards for home and community-based services (HCBS) providers to exempt individual direct service workers from these licensing requirements when they contract directly with the Statewide Management Organization (SMO) in the Louisiana Behavioral Health Partnership to provide short-term respite services. It is anticipated that implementation of this proposed rule will not have economic costs or benefits to HCBS providers for FY 11-12, FY 12-13, and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1203#066

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

Hospital Licensing Standards
License Renewal and Dietary Services
(LAC 48:1.9303, 9305, and 9377)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:1.9303, §9305, and §9377 in the Medical Assistance Program as authorized by R.S. 36:254 and 40:2100-2115. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing hospital licensing standards to allow continued operation of a state-owned or operated off-site campus when its main hospital ceases to do business (*Louisiana Register*, Volume 37, Number 10). The department now proposes to amend the provisions governing hospital licensing standards to clarify the renewal process of a license that is under revocation and to allow hospitals to contract with providers for outside dietary services.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 93. Hospitals

Subchapter A. General Provisions

§9303. Definitions

A. ...

License Under Suspensive Appeal—a full or provisional license against which the department has taken a licensing action and the hospital has filed an administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:177 (February 1995), LR 29:2400 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:513 (March 2010), LR 37:3028 (October 2011), LR 38:

§9305. Licensing Process

A. - B.1.b. ...

2. The department also has discretion in denying, suspending or revoking a license where there has been

substantial noncompliance with these requirements in accordance with the hospital law. If a license is denied, suspended or revoked, an appeal may be made as outlined in the hospital law (R.S. 40:2110).

a. **Suspensive Appeal.** A hospital that appeals the action of the department in denying, suspending or revoking the license may file a suspensive appeal from the action of the department.

b. A renewal license shall not be issued, nor will any changes be processed to a hospital's existing license, during the pendency of an administrative suspensive appeal of the department's decision to deny, suspend or revoke a hospital's license for substantial non-compliance. There is no additional administrative remedy to the hospital for the non-renewal of a license.

c. The license for a hospital that is suspensively operating during the pendency of the appeal process shall be considered a license under suspensive appeal.

B.3. - P. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 16:971 (November 1990), LR 21:177 (February 1995), LR 29:2401 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter G. Food and Dietetic Services

§9377. General Provisions

A. ...

B. A hospital may meet the requirements of §9377.A through a contractual agreement with a provider who is licensed by the department's Health Standards Section or through a contract with an outside food management company. If the hospital has a contract with an outside food management company, the following requirements shall be met.

1. The hospital must provide written notices to the department's Health Standards Section and to the department's Office of Public Health within 10 calendar days of the effective date of the contract.

2. The outside food management company must possess a valid Department of Health and Hospitals, Office of Public Health retail food permit and meet all of the requirements for operating a retail food establishment that serves a highly susceptible population, in accordance with the most current version of the provisions found in Title 51, Part XXIII, Chapter 19, §1911.

3. Either the hospital or the food management company must employ or contract with a dietician who serves the hospital on a full-time, part-time, or consultant basis to ensure that the nutritional needs of the patients are met in accordance with the practitioners' orders and acceptable standards of practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2413 (November 2003), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, April 25, 2012 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Hospital Licensing Standards License Renewal and Dietary Services

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$410 (SGF) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections to state or local governmental units.

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

This rule proposes to amend the provisions governing hospital licensing standards to clarify the renewal process of a license that is under revocation and to allow hospitals to contract with providers for outside dietary services (approximately 225 facilities). It is anticipated that implementation of this proposed rule will not have economic costs to hospitals for FY 11-12, FY 12-13, and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1203#067

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Intermediate Care Facilities for Persons
with Developmental Disabilities
Minimum Licensing Standards
(LAC 48:I.Chapter 85 and 86)

The Department of Health and Hospitals, Bureau of Health Services Financing repeals LAC 48:I.Chapter 51 governing the licensing requirements for community homes and LAC 48:I.Chapter 63 governing the licensing requirements for group homes in their entirety, and repeals and replaces LAC 48:I.Chapter 85 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification promulgated Rules governing licensing requirements for intermediate care facilities I and II, community homes, residential homes, and group homes for inclusion in the *Louisiana Administrative Code (Louisiana Register, Volume 13, Number 4)*. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the April 20, 1987 rules to adopt emergency preparedness requirements for community homes, residential homes, and group homes (*Louisiana Register, Volume 32, Number 12*). The department now proposes to repeal the provisions governing the minimum licensing standards for intermediate care facilities I and II, community homes and group homes, and adopts provisions to incorporate these facilities under a single comprehensive Rule for intermediate care facilities for persons with developmental disabilities (ICF/DDs).

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 85. Intermediate Care Facilities for Persons with Developmental Disabilities

Subchapter A. General Provisions

§8501. Introduction

A. These rules and regulations contain the minimum licensure standards for intermediate care facilities for persons with developmental disabilities (ICF/DD), pursuant to R.S. 40:2180 et seq.

B. Standards are established to ensure minimum compliance under the law, equity among those served, provision of authorized services, and proper disbursement. It is the ICF/DD facility's responsibility to keep these standards current. The standards are the basis for surveys by the state agency, and are necessary for the ICF/DD to remain in compliance with state regulations for licensure.

C. Monitoring of an ICF/DD's compliance with state regulations is the responsibility of Department of Health and Hospitals, Health Standards Section (HSS).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8503. Definitions

Administrator—the person appointed by the governing body who is responsible for the day to day functions of the ICF/DD. The administrator can also be called a chief executive officer (CEO).

Bedroom Space—a distinct area used as a sleeping area.

Building Systems—plumbing, mechanical and electrical systems necessary for the complete operations of a facility.

Curator—a person appointed by the court when an individual is interdicted to act as guardian with either limited or full powers over the individual's estate and/or person, depending on the needs of the individual interdicted.

Department—the Louisiana Department of Health and Hospitals (DHH).

Developmental Disabilities (DD)—severe, chronic disabilities which are attributable to mental retardation, cerebral palsy, autism, epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation. This condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of mental retardation, and requires treatment or services similar to those required for MR/DD, are manifested before the person reaches age 22 and are likely to continue indefinitely.

Discipline—training that is expected to produce a specified character or pattern of behavior, and especially is expected to produce moral or mental improvement.

Discipline—a field of study, a branch of instruction or learning, or a branch of knowledge or teaching.

Direct Service Management—the act of controlling the various aspects of ICF/DD involving direct services to individuals in order to ensure effective care and treatment.

Direct Service Worker—an employee of an ICF/DD who works directly with individuals as a major function of his/her job.

Existing Licensed Facility—a structure which has been licensed by the department and has received occupancy approval from the local/parish authorities or occupancy approval from Louisiana State Facility Planning and Control and the Office of the State Fire Marshal prior to the effective date of promulgation of these provisions as a final Rule.

Family—the natural or adoptive father, mother, brother, and sister, but may be interpreted broadly to include any person, whether related to the individual by blood or not, who resides in the individual's home and takes part in the individual's family life.

Governing Body—a person or persons with the ultimate responsibility for conducting the affairs of the ICF/DD. The governing body is responsible for appointing an administrator of the ICF/DD.

Intermediate Care Facility for Persons with Developmental Disabilities (ICF/DD)—any 24-hour residential facility, whether public or private, that provides services to individuals that meet the criteria to reside in that facility.

Individual—a person who receives services from an ICF/DD.

Legally Responsible Person—as appropriate, the parent(s) or tutor of a minor or the curator of an interdicted individual.

License—a written certification, whether provisional or regular, of an ICF/DD’s authorization to operate under state law.

Living Units—an integral living space utilized by a particular group of individuals who reside in that space.

Major Renovation—any repair or replacement of building materials or equipment which does not meet the definition of *minor alteration*.

Minor Alteration—repair or replacement of building materials and equipment with materials and equipment of a similar type that does not diminish the level of construction beyond that which existed prior to the alteration. This does not include any alteration to the “functionality” or original design of the construction (for example, normal maintenance, re-roofing, painting, wallpapering, asbestos removal, and changes to the electrical and mechanical systems).

Parent—the natural or adoptive mother and father of an individual.

Passive Physical Restraint—the least amount of direct physical contact required on the part of a staff member to prevent an individual from harming himself/herself or others.

Psychotropic Medication—prescription medication given for the purpose of producing specific changes in mood, thought processes, or behavior. They exert specific effects on brain function and can be expected to bring about specific clinically beneficial responses in individuals for whom they are prescribed. The term as used in this policy does not include all drugs which affect the central nervous system, or which may have behavioral effects. For example, the term does not include anticonvulsants or hormones.

Qualified Mental Retardation Professional (QMRP)—the professionally qualified person responsible for overseeing the implementation of an individual’s service plan. A QMRP is a person who has specialized training or one year of experience in training or one year of experience in treating or working with the mentally retarded as described in §8579 below.

Qualified Professional (QP)—a psychologist or physician as described in §8579 below.

Re-Establishment Facilities—an existing licensed facility that maintains its license while it has temporarily suspended operation in all or portions of a building due to substantial structural damage.

Replacement Facilities—an existing structure that has obtained substantial structural damage beyond repair and is being totally replaced at another site location or on the same site.

Restraint—the extraordinary restriction of an individual’s freedom or freedom of movement.

Service Plan—a comprehensive, time-limited, goal-oriented, individualized plan for care, treatment, and education of an individual in care of an ICF/DD. The *service plan* is based on a current comprehensive evaluation of the individual’s needs.

SIP—shelter in place.

Start of Construction—the date the construction permit was issued for new construction, provided that the actual start of construction commenced within 180 days of the permit date. The actual start means either the first placement

of permanent construction of a structure on a site, such as the pouring of a slab or footing, the installation of piles, the construction of columns, or any other work beyond the stage of excavation; or the placement of a manufactured home. Permanent construction does not include land preparation such as clearing, grading, or filling; nor does it include excavation of a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For substantial repair or substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a structure, whether or not that alteration affects the external dimensions of the structure.

Structure—any building or other structure.

Substantial Structural Damage—damage of any origin sustained by a structure, whereby the cost of restoration to its pre-damaged condition equals or exceeds 50 percent of its pre-damaged market value, or equals or exceeds a smaller percentage established by the authority having jurisdiction. Evaluation shall be as determined and accepted by the Department of Public Safety, Office of the State Fire Marshal in accordance with RS 40:1574 C-G.

Time-Out Procedure—the isolation of an individual for a period of less than 30 minutes in an unlocked room.

Training—any activity outside the normal routine of the ICF/DD which promotes the development of skills related to individual care, increases the knowledge of the person involved in a related field or fosters the development of increased professionalism.

Treatment Strategy—an orientation or set of clinical techniques informed by a particular therapeutic model and used to meet a diagnosed need of an individual in care over and above the provisions of basic care.

Tutor—pursuant to Louisiana civil law, a person appointed to have the care of the person of a minor and the administration of his/her estate. There are four types of tutorship.

1. Tutorship by Nature. Upon the death of either parent, the tutorship of minor individuals belongs of right to the other parent. Upon divorce or judicial separation, the tutorship of each minor individual belongs of right to the parent under whose care he/she has been placed.

2. Tutorship by Will. The right of appointing a tutor belongs exclusively to the father or mother dying last. The appointment may be through the surviving parent’s will or by declaration in notaries act executed before a notary public and two witnesses. If the parents are divorced or judicially separated, only one with court-appointed custody may appoint a tutor by will or notaries act.

3. Tutorship by the Effect of Law. When a tutor has not been appointed for a minor by the parent dying last, the court shall appoint the nearest ascendant in the direct line of the minor.

4. Tutorship by Appointment of the Judge. When a minor is an orphan and has had no tutor appointed by either parent, or any relation claiming tutorship by effect of law, the court shall appoint a tutor for the minor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8505. Licensing Requirements

A. All ICF/DD providers shall be licensed by the Department of Health and Hospitals. An ICF/DD shall not be established, opened, operated, managed, maintained, or conducted in the state without a license issued by DHH. Each ICF/DD shall be separately licensed.

B. DHH is the only licensing authority for ICF/DD providers in the state of Louisiana. It shall be unlawful to operate an ICF/DD provider without possessing a current, valid license issued by the department.

C. Each ICF/DD license shall:

1. be issued only to the person or entity named in the license application;

2. be valid only for the ICF/DD provider to which it is issued, and only for the specific geographic address of that provider;

3. be valid for one year from the date of issuance, unless revoked, suspended, modified, or terminated prior to that date, or unless a provisional license is issued;

4. expire the last day of the twelfth month after the date of issuance, unless timely renewed by the ICF/DD provider;

5. not be subject to sale, assignment, donation, or other transfer, whether voluntary or involuntary;

6. be posted in a conspicuous place on the licensed premises at all times; and

7. specify the maximum number of individuals which may be served by the ICF/DD facility.

D. The licensed ICF/DD provider shall abide by and adhere to any federal, state and local laws, rules, policy, procedure, manual, or memorandums pertaining to ICF/DD provider facilities.

E. A separately licensed ICF/DD provider shall not use a name which is substantially the same as the name of another ICF/DD provider licensed by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8507. Initial Licensing Application Process

A. An application packet for licensing as an ICF/DD must be obtained from the department. A completed initial license application packet for the ICF/DD must be submitted to and approved by the department prior to an applicant providing services.

B. An initial applicant must submit a completed licensing packet to DHH, which shall include:

1. a completed ICF/DD licensure application and the non-refundable licensing fee as established by statute;

2. a completed disclosure of ownership and control information form;

3. a copy of a statewide criminal background check, including sex offender registry status, on all owners and administrators;

4. a copy of the approval letter of the architectural facility plans from the Office of the State Fire Marshal and any other office/entity designated by the department to review and approve the facilities architectural plans, if the facility must go through plan review;

5. a copy of the on-site inspection report with approval for occupancy from the Office of the State Fire Marshal;

6. a copy of the health inspection report with approval of occupancy from the Office of Public Health;

7. zoning approval from local governmental authorities; and

8. any other documentation or information required by the department for licensure.

C. Any person convicted of any felony listed below is prohibited from being the owner or administrator of an ICF/DD facility. Any licensing application from such a person shall be rejected by the department.

1. For purposes of this Paragraph, conviction of a felony means:

a. any felony relating to the violence, abuse, or negligence of a person;

b. any felony relating to the misappropriation of property belonging to another person;

c. any felony relating to cruelty to the infirmed, exploitation of the infirmed, or sexual battery of the infirmed;

d. any felony relating to a drug offense;

e. any felony relating to crimes of a sexual nature;

f. any felony relating to a firearm or deadly weapon;

g. any felony relating to Medicare or Medicaid fraud; or

h. any felony relating to fraud or misappropriation of federal or state funds.

D. If the initial licensing packet is incomplete, the applicant shall be notified of the missing information and shall have 90 days from receipt of notification to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ICF/DD provider must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

E. Once the initial licensing application packet has been approved by the department, notification of such approval shall be forwarded to the applicant. Within 90 days of receipt of the approval of the application, the applicant must notify DHH that the ICF/DD is ready and is requesting an initial licensing survey. If an applicant fails to so notify DHH within 90 days, the initial licensing application shall be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ICF/DD provider must submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

F. Applicants must be in compliance with all of the appropriate federal, state, departmental, or local statutes, laws, ordinances, rules, regulations, policy, manuals, memorandums and fees before the ICF/DD provider will be issued an initial license to operate by DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8509. Initial Licensing Surveys

A. Prior to the initial license being issued to the ICF/DD, an initial licensing survey shall be conducted on site at the facility to assure compliance with the licensing laws and standards.

B. In the event that the initial licensing survey finds that the ICF/DD facility is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended or terminated.

C. In the event the initial licensing survey finds that the ICF/DD facility is non-compliant with any licensing laws or regulations or any other required statutes, law, ordinances, rules or regulations, but the department in its sole discretion determines that the noncompliance does not present a potential threat to the health, safety, or welfare of the individuals receiving services, the department may issue a provisional initial license for a period not to exceed six months. The facility must submit a plan of correction to DHH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are determined to be corrected on a follow-up survey, then a full license shall be issued. If all such noncompliance or deficiencies are not corrected on the follow-up survey or new deficiencies affecting the health, safety, or welfare of a client are cited, the provisional license shall expire and the provider shall be required to begin the initial licensing process again by submitting a new initial license packet and fee. However, at the sole discretion of the department the provisional license may be extended for an additional period not to exceed nine days in order for the ICF/DD to correct the noncompliance or deficiencies.

D. In the event that the initial licensing survey finds that the ICF/DD facility is noncompliant with any licensing laws or regulations or any other required statute, law, ordinance, Rule, or regulation, or that present a potential threat to the health, safety, or welfare of the individuals receiving services, the department shall deny the initial license.

E. The initial licensing survey of an ICF/DD provider shall be a scheduled, announced survey. There shall be at least one individual in the ICF/DD facility at the time of the initial licensing survey.

F. Once an ICF/DD provider has been issued an initial license, the department shall conduct licensing surveys at intervals deemed necessary by DHH to determine compliance with licensing regulations, as well as other required statutes, laws, ordinances, rules, regulations, and fees. These licensing surveys shall be unannounced.

1. An acceptable plan of correction may be required from an ICF/DD provider for any survey where deficiencies have been cited. Such plan of correction shall be approved by the department.

2. A follow-up survey shall be conducted for any survey where deficiencies have been cited to ensure correction of the deficient practices.

3. If deficiencies have been cited, regardless of whether an acceptable plan of correction is required, the

department may issue appropriate sanctions, including, but not limited to:

- a. civil monetary penalties;
- b. directed plans of correction; and
- c. license revocations.

G. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any licensing or other survey. DHH surveyors and staff shall be allowed to interview any provider staff, participant, or person receiving services, as necessary to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8511. Types of Licenses and Expiration Dates

A. The department shall have authority to issue the following types of licenses.

1. Full Initial License. In the event that the initial licensing survey finds that the ICF/DD facility is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations and fees, the department shall issue a full license to the provider. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended or terminated.

2. Provisional Initial License. In the event that the initial licensing survey finds that the ICF/DD facility is non-compliant with any licensing laws or regulations or any other required statutes, laws, ordinances, Rules, regulations or fees, the department is authorized to issue a provisional initial license pursuant to the requirements and provisions of these regulations.

3. Full Renewal License. The department may issue a full renewal license to an existing licensed ICF/DD provider which is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, Rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. Provisional Renewal License. The department, in its sole discretion, may issue a provisional license to an existing licensed ICF/DD provider for a period not to exceed six months, for the following reasons:

- a. the existing ICF/DD provider has more than five deficient practices or deficiencies cited during any one survey;
- b. the existing ICF/DD provider has more than three validated complaints in a 12-month period;
- c. the existing ICF/DD provider has been issued a deficiency that involved placing an individual at risk for serious harm or death;
- d. the existing ICF/DD provider has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of the follow-up survey; or
- e. the existing ICF/DD provider is not in substantial compliance with all of the applicable federal, state, departmental, and local statutes, laws, ordinances, Rules, regulations, and fees at the time of renewal of the license.

5. When the department issues a provisional license to an existing licensed ICF/DD provider, the provider must

submit a plan of correction to DHH for approval, and the provider shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. The department shall conduct an on-site follow-up survey at the ICF/DD provider prior to the expiration of the provisional license. If that on-site follow-up survey determines that the ICF/DD provider has corrected the deficient practices and has maintained compliance during the period of the provisional license, then the department may issue a full license for the remainder of the year until the anniversary date of the ICF/DD license. If that on-site follow-up survey determines that the ICF/DD provider has not corrected the deficient practices, has not maintained compliance during the period of the provisional license, or if new deficiencies that are a threat to the health, safety, or welfare of a client are cited on the follow-up, the provisional license shall expire. However, at the sole discretion of the department the provisional license may be extended by the department, not to exceed 90 days, in order for the ICF/DD provider to correct the non-compliance or deficiencies.

B. If an existing licensed ICF/DD provider has been issued a notice of license revocation or termination, and the provider's license is due for annual renewal, the department shall deny the license renewal application and shall not issue a renewal license.

1. The denial of the license renewal application shall not affect in any manner the license revocation, suspension, or termination.

C. The renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8513. Changes in Licensee Information or Personnel

A. An ICF/DD license shall be valid only for the person or entity named in the license application and only for the specific geographic address listed on the license application.

B. Any changes regarding the ICF/DD's facility name, "doing business as" name, mailing address, phone number, or any combination thereof, shall be reported in writing to the department within five days of the change.

C. Any change regarding the provider's key administrative personnel shall be reported in writing to DHH within five days of the change.

1. Key administrative personnel include the:

a. administrator.

2. The facility's notice to DHH shall include the individual's:

- a. name;
- b. address;
- c. hire date; and
- d. qualifications.

D. A change of ownership (CHOW) of the ICF/DD shall be reported in writing to the department within five days of the change of ownership. The license of the ICF/DD is not transferable or assignable; the license of an ICF/DD cannot be sold. In the event of a CHOW, the new owner shall submit the legal CHOW document, all documents required for a new license, and the applicable licensing fee. Once all application requirements are completed and approved by the department, a new license shall be issued to the new owner.

1. An ICF/DD provider who is under license suspension, revocation, or termination may not undergo a CHOW.

2. If the CHOW results in a change of geographic address, an on-site survey shall be required prior to the issuance of the new license.

E. If the ICF/DD provider changes its name without a change in ownership, the ICF/DD provider shall report such change to DHH in writing five days prior to the change. The change in the ICF/DD provider name requires a change to the provider's license and payment of the applicable fee.

F. Any request for a duplicate license must be accompanied by the applicable fee.

G. An ICF/DD provider that intends to change the physical address of its geographic location is required to have plan review approval, Office of the State Fire Marshal approval, Office of Public Health approval, compliance with other applicable licensing requirements, and an on-site licensing survey prior to the relocation of the facility. The relocation of the facility's physical address results in a new anniversary date and the full licensing fee shall be paid. Written notice of intent to relocate must be submitted to the licensing section of the department when plan review request is submitted to the department for approval.

H. Any ICF/DD provider who intends to renovate its facility is required to have plan review approval prior to renovation and an on-site licensing survey after renovation of the facility is complete. Written notice of intent to renovate shall be submitted to the licensing section of the department when plan review request is submitted to the department for approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8515. Renewal of License

A. License Renewal Application. The ICF/DD provider shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. the license renewal application;
2. a copy of the current on-site inspection with approval for occupancy from the Office of the State Fire Marshal;
3. a copy of the current on-site inspection report with approval of occupancy from the Office of Public Health;
4. the non-refundable license renewal fee; and
5. any other documentation required by the department.

B. The department may perform an on-site survey and inspection upon annual renewal.

C. Failure to submit to DHH a completed license renewal application packet prior to the expiration of the current license shall result in the voluntary non-renewal of the ICF/DD license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8517. Survey Activities

A. The department may conduct annual licensing surveys and other surveys as deemed necessary to ensure compliance

with all laws, rules, and regulations governing ICF/DD providers and to ensure client health, safety and welfare. These surveys may be conducted on-site or as an administrative review.

B. The department shall conduct complaint surveys. Complaint surveys shall be conducted in accordance with R.S. 40:2009.13 et seq.

C. Surveys shall be unannounced surveys.

D. The department may require an acceptable plan of correction from a provider for any survey where deficiencies have been cited, regardless of whether the department takes other action against the facility for the deficiencies cited in the survey. The acceptable plan of correction shall be approved by DHH.

E. A follow-up survey may be conducted for a survey where deficiencies have been cited to ensure correction of the deficient practices.

F. The department may issue appropriate sanctions for noncompliance, deficiencies, and violations of law, rules and regulations. Sanctions include, but are not limited to:

1. civil monetary penalties;
2. directed plans of correction; and
3. license revocation.

G. DHH surveyors and staff shall be given access to all areas of the facility and all relevant files during any complaint survey. DHH surveyors and staff shall be allowed to interview any provider staff or individual receiving services, as necessary or required to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8519. Statement of Deficiencies

A. The following statements of deficiencies issued by the department to the ICF/DD shall be posted in a conspicuous place on the licensed premises:

1. the most recent annual survey statement of deficiencies; and
2. any subsequent complaint survey statement of deficiencies.

B. Any statement of deficiencies issued by the department to the ICF/DD provider shall be available for disclosure to the public 30 calendar days after the provider submits an acceptable plan of correction of the deficiencies or 90 calendar days after the statement of deficiencies is issued to the provider, whichever occurs first.

C. Unless otherwise provided in statute or in this licensing Rule, a provider shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the deficient practices, of the violation, or of the non-compliance or deficiency shall not be the basis for the reconsideration.

2. The informal reconsideration of the deficiencies shall be requested in writing within 10 calendar days of receipt of the statement of deficiencies, unless otherwise provided in this Rule.

3. The request for informal reconsideration of the deficiencies shall be made to the department's Health Standards Section. The request for informal reconsideration shall be considered timely if received by the Health Standards Section within 10 calendar days of the provider's receipt of the statement of deficiencies.

4. If a timely request for an informal reconsideration is received, the department shall schedule and conduct the informal reconsideration.

5. The provider shall be notified in writing of the results of the informal reconsideration.

6. Except as provided for in complaint surveys pursuant to R.S. 40:2009.11 et seq., and as provided in this licensing Rule for license denials, revocations, and non-renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies. There is no administrative appeal right of such deficiencies.

7. Pursuant to R.S. 40:2009.13, et seq., for complaint surveys in which the licensing agency (Health Standards Section) of the department determines that the complaint involves issues that have resulted in, or are likely to result in, serious harm or death, as defined in the statute, the determination of the informal reconsideration may be appealed administratively to the department's Division of Administrative Law or its successor. The hearing before the Division of Administrative Law or its successor is limited only to whether the investigation or complaint survey was conducted properly or improperly. The Division of Administrative Law or its successor shall not delete or remove deficiencies as a result of such hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8521. Denial of License, Revocation of License, or Denial of License Renewal

A. The department may deny an application for a license, may deny a license renewal, or may revoke a license in accordance with the provisions of the Administrative Procedure Act.

B. Denial of an Initial License

1. The department shall deny an initial license in the event that the initial licensing survey finds that the ICF/DD facility is non-compliant with any licensing laws or regulations or with any other required statute, laws, ordinances, Rules or regulations that present a potential threat to the health, safety, or welfare of the individuals receiving services.

2. The department shall deny an initial license for any of the reasons a license may be revoked or non-renewed pursuant to these licensing regulations.

C. Voluntary Non-Renewal of a License

1. If a provider fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the provider.

2. If an ICF/DD fails to timely renew its license, the provider shall immediately cease and desist providing services, unless the provider has individuals in the ICF/DD facility. In which case, the provider shall comply with the following requirements:

a. shall immediately provide written notice to the department of the number of individuals receiving services in the ICF/DD facility;

b. shall immediately provide written notice to the individual, parent, legal guardian, or legal representative of the following:

- i. notice of voluntary non-renewal;
- ii. notice of closure; and
- iii. plans for orderly transition of the individuals receiving services;

c. shall discharge and transition each individual within 15 calendar days of voluntary non-renewal; and

d. shall notify the department of where records will be stored and the contact person for those records.

3. If an ICF/DD provider fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating or owning an ICF/DD facility for a period of two years.

D. Revocation of License or Denial of License Renewal. An ICF/DD's license may be denied renewal or may be revoked for any of the following reasons, including but not limited to:

1. failure to be in substantial compliance with the ICF/DD licensing laws, rules and regulations or with other required statutes, laws, ordinances, rules or regulations;

2. failure to comply with the terms and provisions of a settlement agreement or education letter with or from the department, the Attorney General's office, any regulatory agency, or any law enforcement agency;

3. failure to uphold resident rights whereby deficient practices may result in harm or injury or death of an individual receiving services;

4. negligent or harmful failure to protect an individual receiving services from a harmful act of an employee or other individual receiving services including, but not limited to:

a. mental or physical abuse, neglect, exploitation, or extortion;

b. an action posing a threat to an individual's health and safety;

c. coercion;

d. threat or intimidation;

e. harassment; or

d. criminal activity;

5. failure to notify the proper authorities, as required by federal or state law or Rule or regulations, of all suspected cases of:

a. mental or physical abuse, neglect, exploitation, or extortion;

b. an action posing a threat to an individual's health and safety;

c. coercion;

d. threat or intimidation;

e. harassment; or

f. criminal activity;

6. knowingly making a false statement in any of the following areas, including but not limited to:

a. application for initial license or renewal of license;

b. data forms;

c. clinical records, client records, or provider records;

d. matters under investigation by the department or the Office of the Attorney General; or

e. information submitted for reimbursement from any payment source;

7. knowingly making a false statement or providing false, forged, or altered information or documentation to DHH employees or to law enforcement agencies;

8. the use of false, fraudulent or misleading advertising;

9. fraudulent operation of an ICF/DD facility by the owner, administrator, manager, member, officer, or director;

10. an owner, officer, member, manager, administrator, director, or person designated to manage or supervise an individual receiving services has plead guilty or nolo contendere to a felony, or has been convicted of a felony, as documented by a certified copy of the record of the court. For purposes of this paragraph, conviction of a felony means:

a. any felony relating to the violence, abuse, or negligence of a person;

b. any felony relating to the misappropriation of property belonging to another person;

c. any felony relating to cruelty of the infirmed, exploitation of the infirmed, or sexual battery of the infirmed;

d. any felony relating to a drug offense;

e. any felony relating to crimes of sexual nature;

f. any felony relating to a firearm or deadly weapon;

g. any felony relating to Medicare or Medicaid fraud; or

h. any felony relating to fraud or misappropriation of federal or state funds;

11. failure to comply with all reporting requirements in a timely manner as required by the department;

12. bribery, harassment, intimidation, or solicitation of any client designed to cause that client to use or retain the services of any particular ICF/DD;

13. cessation of business or non-operational status;

14. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview provider staff or individuals;

15. interference with the survey process, including but not limited to, harassment, intimidation, or threats against the survey staff;

16. failure to allow or refusal to allow access to provider, facility or client records by authorized departmental personnel;

17. failure to repay an identified overpayment to the department or failure to enter into a payment agreement to repay such overpayment; or

18. failure to timely pay outstanding fees, fines, sanctions or other debts owed to the department.

E. In the event an ICF/DD's license is revoked or renewal is denied, (other than for cessation of business or non-operational status) any owner, officer, member, director, manager, or administrator of such ICF/DD facility may be prohibited from opening, managing, directing, operating, or owning another ICF/DD facility for a period of two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8523. Notice and Appeal of License Denial, Revocation or Non-Renewal

A. Notice of a license denial, license revocation, or license non-renewal (i.e. denial of license renewal) shall be given to the provider in writing.

B. The ICF/DD has the right to an informal reconsideration of the license denial, license revocation, or license non-renewal. There is no right to an informal reconsideration of a voluntary non-renewal or surrender of a license by the provider.

1. The ICF/DD provider shall request the informal reconsideration within 15 calendar days of the receipt of the notice of the license denial, license revocation, or license non-renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section. The request for informal reconsideration shall be considered timely if received by DHH Health Standards within 15 days from the provider's receipt of the notice.

2. The request for informal reconsideration shall include any documentation that demonstrates that the determination was made in error.

3. If a timely request for an informal reconsideration is received by the Health Standards Section, an informal reconsideration shall be scheduled and the provider will receive written notification of the date of the informal reconsideration.

4. The provider shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation of a deficiency which is the basis for the denial, revocation or non-renewal, shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process.

7. The provider will be notified in writing of the results of the informal reconsideration.

C. The ICF/DD provider has a right to an administrative appeal of the license denial, license revocation, or license non-renewal. There is no right to an administrative appeal of a voluntary non-renewal or surrender of a license by a provider.

1. The ICF/DD provider shall request the administrative appeal within 30 calendar days of the receipt of the result of the informal reconsideration. The ICF/DD may forgo its rights to an informal reconsideration, and if so, the ICF/DD shall request the administrative appeal within 30 calendar days of the recipient of the notice of license denial, license revocation, or license non-renewal. The request for administrative appeal shall be in writing and shall be submitted to the department's Division of Administrative Law or its successor.

2. The request for administrative appeal shall include any documentation that demonstrates that the determination was made in error and shall include the basis and specific reasons for the appeal.

3. If a timely request for an administrative appeal is received by the Division of Administrative Law or its successor, the administrative appeal of the license revocation or license non-renewal shall be suspensive, and the provider shall be allowed to continue to operate and provide services until such time as the department issues a final

administrative decision. If the department denied an initial license application, the ICF/DD shall discharge any and all individuals receiving services.

a. Notwithstanding the provisions of Paragraph §8523.C.3 above, if the secretary of the department determines that the violations of the facility pose an imminent or immediate threat to the health, welfare, or safety of a participant or individual receiving services, then the imposition of the license revocation or license non-renewal may be immediate and may be enforced during the pendency of the administrative appeal.

b. If the secretary of the department makes such a determination, the facility shall be notified in writing of such determination.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or non-renewal, shall not be a basis for the administrative appeal.

D. If an existing ICF/DD provider has been issued a notice of license revocation and the provider's license is due for annual renewal, the department shall deny the license renewal application. The denial of the license renewal application does not affect in any manner the license revocation.

E. If a timely administrative appeal has been filed by the provider on a license denial, license non-renewal, or license revocation, the department's Division of Administrative Law or its successor shall conduct the hearing within 90 days of docketing of the administrative appeal. One extension, not to exceed 90 days, may be granted by the Division of Administrative Law or its successor upon good cause shown.

1. If the final agency action is to reverse the license denial, the license non-renewal, or the license revocation, the provider's license will be re-instated or granted upon the payment of any licensing or other fees due to the department and the payment of any outstanding sanctions due to the department.

2. If the final agency action is to affirm the license non-renewal or the license revocation, the provider shall discharge any and all individuals receiving services according to the provisions of this Rule. Within 10 days of the final agency decision, the provider must notify the department's licensing section in writing of the secure and confidential location of where client records will be stored.

F. There is no right to an informal reconsideration or an administrative appeal of the issuance of a provisional initial license to a new ICF/DD or the issuance of a provisional license to an existing ICF/DD. A provider who has been issued a provisional license is licensed and operational for the term of the provisional license. The issuance of a provisional license to an existing ICF/DD is not considered to be a denial of license, a denial of license nonrenewal, or a license revocation.

1. If a provisional license is issued, the provider shall submit a plan of correction to DHH for approval, and shall be required to correct all noncompliance or deficiencies prior to the expiration of the provisional license.

2. The department shall conduct a follow-up survey, either on-site or by desk review, of the ICF/DD provider prior to the expiration of the provisional license.

3. If the follow-up survey determines that the ICF/DD provider has corrected the deficient practices and has maintained compliance during the period of the provisional

license, the department may issue a full license for the remainder of the year until the anniversary date of the ICF/DD provider.

4. If the follow-up survey determines that all noncompliance or deficiencies have not been corrected, or if new deficiencies that are a threat to the health, safety, or welfare of individuals receiving services are cited on the follow-up survey, the provisional initial license or provisional license shall expire on the date specified on the provisional license. However, at the sole discretion of the department, the provisional license may be extended for an additional period not to exceed 90 days in order for the ICF/DD facility to correct the non-compliance or deficiencies.

5. The department shall issue written notice to the provider of the results of the follow-up survey.

6. A provider with a provisional initial license or an existing provider with a provisional license that expires due to noncompliance or deficiencies cited at the follow-up survey shall have the right to an informal reconsideration and the right to an administrative appeal as to the deficiencies cited in the follow-up survey.

a. The correction of a violation, noncompliance, or deficiency after the follow-up survey shall not be the basis for the informal reconsideration or the administrative appeal.

b. The informal reconsideration and the administrative appeal are limited to whether the deficiencies were properly cited at the follow-up survey.

c. The provider shall request the informal reconsideration in writing to the DHH Health Standards Section within five calendar days of receipt of the notice of the results of the follow-up survey from the department. The informal reconsideration request shall be considered timely if received by the Health Standards Section within five days from provider's receipt of the notice.

d. The provider must request an administrative appeal within five calendar days of receipt of the notice of the results of the informal reconsideration. The facility may forgo its right to an informal reconsideration, and if so, the facility shall request an administrative appeal within five calendar days of receipt of the notice of the results of the follow-up survey. The request for an administrative appeal shall be in writing and shall be submitted to the department's Division of Administrative Law or its successor.

e. A provider with a provisional initial license or an existing provider with a provisional license that expires under the provisions of this section shall cease providing services and discharge clients unless the Division of Administrative Law or its successor issues a stay of the expiration. The stay may be granted by the Division of Administrative Law or its successor upon application by the provider at the time the administrative appeal is filed and only after a contradictory hearing, and only upon a showing that there is no potential harm to the client being served by the provider.

f. If a timely administrative appeal has been filed by a provider with a provisional license that has expired or by an existing provider whose provisional license has expired under the provision of this section, the Division of Administrative Law or its successor shall conduct the hearing within 90 days of the docketing of the administrative appeal. One extension, not to exceed 90 days, may be

granted by the Division of Administrative Law or its successor upon good cause shown.

i. If the final agency decision is to remove all deficiencies, the provider's license will be reinstated upon the payment of any licensing or other fees due to the department and the payment of any outstanding sanctions due to the department

ii. If the final agency decision is to uphold the deficiencies and affirm the expiration of the provisional license, the provider shall discharge any and all individuals receiving services. Within 10 days of the final agency decision, the provider must notify the department's licensing section in writing of the secure and confidential location of where client records will be stored.

G. Representation at Hearings. An ICF/DD shall, when allowed by law, have a representative present at all judicial, educational, or administrative hearings which address the status of an individual in the care of the ICF/DD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8525. Cessation of Business

A. An ICF/DD that intends to close or cease operations shall comply with the following procedures:

1. shall give 30 days advance written notice to the following:

a. the department; and

b. the parent(s) or legal guardian or legal representative;

2. shall notify the department of where records will be stored and the contact person for those records; and

3. shall provide for an orderly discharge and transition of the individuals in the facility.

B. If an ICF/DD provider fails to follow these procedures, the owners, managers, officers, directors, and administrators may be prohibited from opening, managing, directing, operating or owning an ICF/DD for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter B. Administration and Organization

§8531. Governing Body

A. An ICF/DD shall have an owner or identifiable governing body with responsibility for, and authority over, the policies and activities of the ICF/DD and ultimate authority for:

1. the overall operation of the facility;

2. the adequacy and quality of care;

3. the financial solvency of the facility and the appropriate use of its funds;

4. the implementation of the standards set forth in these regulations; and

5. the adoption, implementation, and maintenance, in accordance with the requirements of state and federal laws and regulations and these licensing standards, of ICFs/DD and administrative policies governing the operation of the facility.

B. An ICF/DD shall have documents identifying the names and addresses of its owners. When an ICF/DD is owned by any type of corporation, partnership, or

association it shall identify the names and address of its members and officers and shall have, where applicable, a charter, partnership agreement, articles of association, by laws, or other organizational documents.

C. An ICF/DD shall have documents identifying all members of the governing body; their addresses; their terms of membership; officers of the governing body, and terms of office of all officers, if applicable.

D. When the governing body of an ICF/DD is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

E. When the governing body is composed of more than one person, an ICF/DD shall have written minutes of all formal meetings of the governing body and by-laws specifying the frequency of meetings and the quorum requirements.

F. Responsibilities of a Governing Body. The governing body of an ICF/DD shall:

1. ensure the ICF/DD's continual compliance and conformity with the ICF/DD's charter, bylaws or other organizational documents;

2. ensure the ICF/DD's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;

3. ensure that the ICF/DD is adequately funded and fiscally sound;

4. review and approve the ICF/DD's annual budget;

5. ensure the review and approval of an annual external audit;

6. ensure that the ICF/DD is housed, maintained, staffed, and equipped appropriately considering the nature of the ICF/DD's program;

7. designate a person to act as administrator and delegate sufficient authority to this person to manage the ICF/DD;

8. formulate and annually review, in consultation with the administrator, written policies concerning the ICF/DD's philosophy, goals, current services, personnel practices, and fiscal management;

9. annually evaluate the administrator's performance;

10. have the authority to dismiss the administrator;

11. meet with designated representatives of the department whenever required to do so;

12. inform designated representatives of DHH prior to initiating any substantial changes in the program, services or physical plant of the ICF/DD; and

13. ensure statewide criminal background check on all unlicensed persons.

G. The administrator or a person authorized to act on behalf of the administrator shall be accessible to the ICF/DD staff and designated representatives of DHH at all times.

H. An ICF/DD shall have a written statement describing its philosophy and describing both long-term and short-term goals. An ICF/DD shall have a written program plan describing the services and programs offered by the ICF/DD.

I. Administrative File. An ICF/DD shall have an administrative file including:

1. articles of incorporation or certified copies thereof, if incorporated, bylaws, operating agreements, or partnership documents, if applicable;

2. documents identifying the governing body;

3. a list of members and officers of the governing body and their addresses and terms of membership, if applicable;

4. minutes of formal meetings, if applicable;

5. documentation of the ICF/DD's authority to operate under state law;

6. an organizational chart of the ICF/DD, which clearly delineates the line of authority;

7. all leases, contracts and purchase-of-service agreements to which the ICF/DD is a party;

8. insurance policies;

9. annual budgets and audit reports; and

10. copies of all Incident/Accident Reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8533. Fund Raising and Publicity

A. An ICF/DD shall have a policy regarding participation of individuals in activities related to fund-raising and publicity.

B. Consent of the individual receiving services and, where appropriate, the legally responsible person shall be obtained prior to participation in such activities.

C. An ICF/DD shall have written policies and procedures regarding the photographing and audio or audiovisual recordings of individuals.

D. The written consent of the individual receiving services and, where appropriate, the legally responsible person shall be obtained before the individual is photographed or recorded for research or program publicity purposes. Such consent cannot be made a condition for admission into, remaining in, or participating fully in the activities of the facility. Consent agreements must clearly notify the individual receiving services of his/her rights under this regulation, must specify precisely what use is to be made of the photography or recordings, and are valid for a maximum of one year from the date of execution. Individuals are free to revoke such agreements at any time, either orally or in writing.

E. All photographs and recordings shall be used in a manner which respects the dignity and confidentiality of the individual receiving services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8535. Research

A. An ICF/DD shall have written policies regarding the participation of individuals in research projects. These policies shall conform to the National Institute of Mental Health Standards on protection of human subjects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter C. Admission, Transfer, and Discharge Criteria

§8541. Admissions

A. Each ICF/DD shall have written policies and procedures governing the admission, transfer, and discharge of individuals receiving services.

B. Intake and Admissions Policy

1. An ICF/DD shall have a written description of admission policies and criteria. A copy of the admission policies and criteria shall be provided to the department and shall be available to the legally responsible person for any individual referred for placement. The admission policies and criteria shall include, but is not limited to, the following information:

a. policies and procedures related to intake. Intake policies shall include, at least, due process procedures for admission of minors, and determination before admission of appropriate legal status according to appropriate state laws;

b. the age and sex of individuals receiving services in care;

c. the needs, problems, situations, or patterns best addressed by the ICF/DD's program;

d. any other criterion for admission;

e. criteria for discharge;

f. any placement requirements on the individual, the legally responsible person, the department, or other involved agencies; and

g. procedures for ensuring that placement within the program is the least restrictive alternative appropriate to meet the individual's needs.

2. The ICF/DD shall, when applicable, have policies and procedures governing self-admission. Such policies and procedures shall include procedures for notification, as appropriate, of the legally responsible person.

3. An ICF/DD shall not refuse admission to any individual receiving services on the grounds of race, ethnic origin, or disability.

4. An ICF/DD shall not admit more individuals receiving services into care than the number specified on the ICF/DD's license.

5. An ICF/DD shall not accept any individual receiving services for placement whose needs cannot be adequately met by the ICF/DD's program.

6. An ICF/DD shall assess an individual to determine if they are able to meet the needs of that individual. If the ICF/DD is unable to admit the individual based on that assessment the ICF/DD shall provide a written statement to the designated representative of DHH detailing why they are were unable to meet the needs of that individuals.

7. An ICF/DD shall ensure that the individual receiving services where appropriate, the legally responsible person, and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions. Proper consents shall be obtained before admission. Where such involvement of the legally responsible person is not possible, or not desirable, the reasons for their exclusion shall be recorded in the admission study.

C. Intake Evaluation

1. The ICF/DD shall accept an individual into care only when a current comprehensive intake evaluation has been completed, including social, health and family history; and medical, social, psychological and as appropriate, developmental or vocational or educational assessment. This evaluation shall contain evidence that a determination has been made that the individual cannot be maintained in a less restrictive environment within the community.

2. In emergency situations necessitating immediate placement into care, the ICF/DD shall gather as much information as possible about the individual to be admitted and the circumstances requiring placement, formalize this in an "emergency admission note" within two days of admission and then proceed with an intake evaluation as quickly as possible. The intake evaluation shall be completed within 30 days of admission.

D. Clarification of Expectations to Individuals. The ICF/DD shall, consistent with the individual's maturity and ability to understand, make clear its expectations and requirements for behavior and provide the individual referred for placement with an explanation of the ICF/DD's criteria for successful participation in and completion of the program.

E. Placement Agreement

1. The ICF/DD shall ensure that a written placement agreement is completed. A copy of the placement agreement signed by all parties involved in its formulation shall be kept in the individual's record and a copy shall be available to DHH, the individual and, where appropriate, the legally responsible person.

2. An ICF/DD shall not admit any individual into care whose presence will be seriously damaging to the ongoing functioning of the ICF/DD or to individuals already in care.

3. The placement agreement shall be developed with the involvement of the individual, where appropriate, the legally responsible person and DHH. Where the involvement of any of these parties is not feasible or desirable, the reasons for the exclusion shall be recorded. The placement agreement shall include, by reference or attachment, at least the following:

a. discussion of the individual's and the family's expectations regarding:

i. family contact and involvement;

ii. the nature and goals of care, including any specialized services to be provided;

iii. the religious orientation and practices of the individual; and

iv. the anticipated discharge date and aftercare plans;

b. a delineation of the respective roles and responsibilities of all agencies and persons involved with the individual and his/her family;

c. authorization to care for the individual;

d. authorization to obtain medical care for the individual;

e. arrangements regarding visits, vacation, mail, gifts, and telephone calls;

f. arrangements as to the nature and frequency of reports to, and meetings involving, the legally responsible person and referring agency; and

g. provision for notification of the legally responsible person in the event of unauthorized absence, illness, accident or any other significant event regarding the individual.

4. The ICF/DD shall ensure that each individual, upon placement, is checked for illness, fever, rashes, bruises, and injury. The individual shall be asked if he/she has any physical complaints. The results of this procedure shall be documented and kept in the individual's record.

5. The ICF/DD shall assign a staff member to orient the individual, and where available, the family to life at the ICF/DD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8543. Voluntary and Involuntary Transfers and Discharges

A. There are two types of transfers or discharges from an ICF/DD facility:

1. planned or voluntary discharge; or
2. involuntary transfer or discharge.

B. A planned or voluntary transfer or discharge occurs in the following situations:

1. a planned downsizing of a state facility; or
2. a planned transfer or discharge due to client or authorized representative request.

C. The client and/or legal representative(s) must give their written consent to all non-emergency situations, however, written consent by the client and/or legal representative(s) is not required for those situations involving a planned downsizing of a state facility. Notification shall be made to the parents or legal representative(s) as soon as possible, if applicable.

D. Prior to a planned discharge of an individual, the ICF/DD's staff shall formulate an aftercare plan specifying the supports and resources to be provided to the individual. Aftercare plans shall be kept in the individual's record.

E. Prior to discharge, the ICF/DD's staff shall ensure that the individual is aware of and understands his/her aftercare plan and the department's representative shall be notified of the plans.

F. If the client is being discharged to another ICF/DD or provider, representatives from the staff of both the sending and receiving facilities or providers shall confer as often as necessary to share appropriate information regarding all aspects of the client's care and habilitation training. The transferring ICF/DD is responsible for developing a final summary of the client's developmental, behavioral, social, health and nutritional status, and with the consent of the client and/or legal representative, providing a copy to authorized persons and agencies. A copy of the summary shall be included in the client's record and must accompany the client upon discharge to another ICF/DD or provider. This summary shall include:

1. the name and home address of the individual and, where appropriate, the legally responsible person;
2. the name, address, telephone number of the ICF/DD;
3. a summary of services provided during care;
4. a summary of growth and accomplishments during care;
5. the assessed needs which remain to be met and alternate service possibilities which might meet those needs; and
6. a statement of an aftercare plan and identification of who is responsible for follow-up services and aftercare.

G. The ICF/DD shall have a written policy concerning unplanned, involuntary discharge. The policy shall ensure that emergency discharges initiated by the ICF/DD take

place only when the health and safety of an individual or other individuals might be endangered by the individual's further placement at the agency.

H. The ICF/DD shall give immediate notice of the client's discharge. The resident and his/her responsible party and/or legal representative or interested family member if known and available, have the right to be notified in writing in a language and manner they understand of the transfer and discharge. The notice must be given no less than thirty days in advance of the proposed action, except that the notice may be given as soon as is practicable prior to the action in the case of an emergency. A copy of the notice must be placed in the client's clinical record and a copy transmitted to:

1. the client;
2. a family member of the client, if known;
3. the client's legal representative and legal guardian, if known;
4. the Community Living Ombudsman Program;
5. DHH, Health Standards Section;
6. the regional office of the Office for Citizens with Developmental Disabilities (OCDD) for assistance with the placement decision;
7. the client's physician; and
8. appropriate educational authorities.

I. The resident, or his legal representative or interested family member, if known and available, has the right to appeal any transfer or discharge to the Department of Health and Hospitals, which shall provide a fair hearing in all such appeals.

J. The facility must ensure that the transfer or discharge is effectuated in a safe and orderly manner. The resident and his legal representative or interested family member, if known and available, shall be consulted in choosing another facility if facility placement is required.

K. When arranging for placement following an emergency discharge, an ICF/DD shall consult with the receiving ICF/DD and the regional office of OCDD, to ensure that the individual is placed in a program that reasonably meets the individual's needs. The ICF/DD shall have a written report detailing the circumstances leading to each unplanned discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter D. Service Delivery

§8547. General Provisions

Reserved.

§8549. Individual Service Plan

A. Qualified Mental Retardation Professional (QMRP). An ICF/DD shall ensure that the QMRP, who is an appropriately qualified professional, is assigned to each individual and given responsibility for and authority over:

1. supervision of the implementation of the individual's service plan;
2. integration of the various aspects of the individual's program;
3. recording of the individual's progress as measured by objective indicators;
4. reviewing the individual's service plan, on a quarterly basis;
5. ensuring the timely release, whenever appropriate, of the individual to a less restrictive setting;

6. monitoring any extraordinary restriction of the individual's freedom including use of any form of restraint, any special restriction on an individual's communication with others and any potentially harmful treatment or behavior management techniques applied to the individual; and

7. ensuring the coordination of all care and services.

B. The Service Plan

1. An ICF/DD shall, within 30 days of admitting an individual, ensure that a comprehensive written psychological, social, and as appropriate, educational assessment of the individual has been completed and, based on this assessment, shall develop a comprehensive, time-limited, goal-oriented individual service plan addressing the needs identified by the assessment.

2. The assessment shall identify the individual's strengths and needs, establish priorities to assist in the development of an appropriate plan and conclude with recommendations concerning approaches and techniques to be used.

3. All methods used in assessing an individual shall be appropriate considering the individual's age, cultural background and dominant language or mode of communication.

4. Individual service plans shall be developed by an interdisciplinary team including the QMRP, representatives of the direct service staff working with the individual on a daily basis and other professionals, as indicated.

5. The ICF/DD shall document that, where applicable, the designated representative of DHH and, where appropriate, the legally responsible person have been invited to participate in the planning process and when they do not participate, shall document the reasons, if known, for non-participation.

6. Unless it is clearly not feasible to do so, an ICF/DD shall ensure that the service plan and any subsequent revisions are explained to the individual and, where appropriate, the legally responsible person, in a language or method understandable to the individual.

7. An ICF/DD shall ensure that the service plan for each individual includes the following components:

- a. the findings of the assessment;
- b. a statement of goals to be achieved or worked towards for the individual and his/her family;
- c. a plan for fostering positive family relationships for the individual, when appropriate;
- d. specifications for the daily activities, including training, education and recreation, to be pursued by the program staff and the individual in order to attempt achieve the stated goals;
- e. specification of any specialized services that will be provided directly or arranged for, and measures for ensuring their proper integration with the individual's ongoing program activities;
- f. specification of time-limited targets in relation to overall goals and specific objectives;
- g. methods for evaluating the individual's progress;
- h. goals and preliminary plans for discharge and aftercare;
- i. identification of all persons responsible for implementing or coordinating implementation of the plan; and

j. the completed service plan shall be signed by all team participants.

8. An ICF/DD shall review each service plan at least annually and evaluate the degree to which the goals have been achieved.

9. An ICF/DD shall continuously monitor the individual's service plan and provide revisions as necessary.

10. The ICF/DD shall prepare quarterly status reports on the progress of the individual relative to the goals and objectives of the service plan. These reports shall be prepared by designated staff and reviewed and approved by the QMRP.

11. An ICF/DD shall ensure that all persons working directly with the individual are appropriately informed of the service plan.

C. Education

1. An ICF/DD shall ensure that each individual has access to appropriate educational services consistent with the individual's abilities and needs, taking into account his/her age and level of functioning.

2. All individuals of school age must either be enrolled in a school system or a program approved by the Department of Education.

D. Reports. When the individual is a minor, the administrator of a ICF/DD or his/her designee shall report in writing to the legally responsible person of the individual at least annually, or as otherwise required by law, with regard to the individual's progress with reference to the goals and objectives in the service plan. This report shall include a description of the individual's medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8551. Food Services

A. An ICF/DD shall ensure that an individual is, on a daily basis, provided with food of such quality and in such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the Food Nutrition Board of the National Research Council. The ICF/DD shall have an organized system of food service supervised by a qualified dietitian or an appropriately qualified person. This dietitian or person shall be responsible for:

1. menu planning;
2. initiating food orders or requisitions;
3. establishing specifications for food purchases and insuring that such specifications are met;
4. storing and handling of food;
5. food preparation;
6. food serving;
7. maintaining sanitary standards in compliance with state and local regulations; and
8. orientation, training, and supervision of food service personnel.

B. A person designated by the administrator shall be responsible for the total food service of the ICF/DD. If this person is not a professionally qualified dietitian, regularly scheduled consultation with a professionally qualified dietitian shall be obtained.

C. The person responsible for food service shall: maintain a current list of individuals with special nutritional

needs, have an effective method of recording and transmitting diet orders and changes, record in the individuals' medical records information relating to special nutritional needs, provide nutrition counseling to staff and individuals and manage and coordinate the resources of the dietary services to achieve effective, efficient and sanitary production. This person shall also ensure that any modified diet for an individual shall be:

1. prescribed by the individual's physician and service plan with a record of the prescription kept on file;
2. planned, prepared, and served by persons who have received adequate training; and
3. periodically reviewed and adjusted as needed.

D. An ICF/DD shall ensure that an individual is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day. Meal times shall be comparable to those in a normal home. Meals shall be served to individuals in appropriate quantity, at appropriate temperatures, in a form consistent with the development level of the individual and with appropriate utensils.

E. The ICF/DD shall ensure that the food provided to an individual in care by the ICF/DD is in accord with his/her religious beliefs.

F. An ICF/DD shall develop written menus at least one week in advance.

G. Written menus and records of foods purchased shall be maintained on file for 30 days. Menus shall provide for a sufficient variety of foods and shall vary from week to week.

H. No individual shall be denied a meal for any reason except according to a doctor's order.

I. No individual shall be forced-fed or otherwise coerced to eat against his/her will except by order of a doctor.

J. When meals are provided to staff, an ICF/DD shall ensure that staff members eat substantially the same food served to individuals in care, unless age differences or special dietary requirements dictate differences in diet.

K. An ICF/DD shall ensure that all individuals, including the mobile non-ambulatory, eat or are fed in dining rooms, except where contraindicated for health reasons or by the individual's service plan.

L. Table service shall be provided for all individuals who can and will eat at a table, including individuals in wheelchairs.

M. Dining areas in a facility shall be equipped with tables, chairs, eating utensils, and dishes designed to meet the developmental needs of each individual.

N. Dining rooms in a facility shall be adequately supervised and staffed for the direction of self-help dining procedures and to assure that each individual receives an adequate amount of food.

O. Individuals shall be provided with systematic training to develop appropriate eating skills, utilizing adaptive equipment where it serves the development process.

P. Direct-care staff shall be trained in and shall utilize proper feeding techniques.

Q. Individuals shall eat in an upright position unless medically contraindicated.

R. Individuals shall eat in a manner consistent with their developmental needs.

S. An ICF/DD shall purchase and provide to individuals only food and drink of safe quality and the storage, preparation and serving techniques shall ensure that nutrients are retained and spoilage is prevented.

T. Dry or staple food items shall be stored at least twelve inches above the floor, in a ventilated space not subject to sewage or waste water backflow or contamination by condensation, leakage, rodents or vermin.

U. An ICF/DD shall ensure that perishable foods are stored at the proper temperatures to conserve nutritive values.

V. An ICF/DD shall ensure that food served to an individual and not consumed is discarded.

W. An ICF/DD shall show evidence of effective procedures for cleaning all equipment and work areas.

X. Hand washing facilities, including hot and cold water, soap, and paper towels, shall be provided in the food service work areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8553. Health Care Services

A. General Provisions

1. An ICF/DD shall ensure the availability of a comprehensive program of preventive, routine and emergency medical and dental care, as appropriate, for all individuals. The ICF/DD shall have a written plan for providing such care. This plan shall include:

- a. ongoing appraisal of the general health of each individual;
- b. provisions of health education, as appropriate;
- c. establishment of an ongoing immunization program;
- d. approaches that ensure that any medical treatment administered will be explained to the individual in language suitable to his/her age and understanding;
- e. an ongoing relationship with a licensed physician and dentist to advise the ICF/DD concerning medical and dental care;
- f. availability of a physician on a 24-hour a day, seven days a week basis; and
- g. the ICF/DD shall show evidence of access to the resources outlined in this plan.

2. An ICF/DD shall have access to psychiatric and psychological resources, on both an emergency and ongoing basis, as appropriate to meet the needs of individuals.

B. Physician Services. An ICF/DD shall arrange a general medical examination by a physician for each individual within a week of admission unless the individual has received such an examination within 30 days before admission and the results of this examination are available to the ICF/DD.

1. This examination shall include:
 - a. an examination of the individual for physical injury and disease;
 - b. vision and hearing screening;
 - c. a current assessment of the individual's general health; and
 - d. whenever indicated, the individual shall be referred to an appropriate medical specialist for either further assessment or treatment.

2. The ICF/DD shall arrange an annual physical examination of all individuals.

3. Physicians shall participate, when appropriate, in the continuous interdisciplinary evaluation of an individual for the purposes of initiation, monitoring, and follow-up of service plans; and

4. An ICF/DD must ensure that an individual receives timely, competent medical care, in keeping with community standards of medical practice when he/she is ill.

C. Immunizations

1. Individuals receiving services shall have proper immunizations and infection control.

2. The ICF/DD shall ensure:

a. that the individual has received all immunizations and booster shots which are required by the Department of Health and Hospitals within 30 days of his/her admission; and

b. reporting of communicable diseases and infections in accordance with law.

D. Medications

1. An ICF/DD shall ensure that no medication is given to any individual except in accordance with the written order of a physician.

a. There shall be no standing orders for prescription medications.

b. The prescribing physician must be immediately informed of any side-effects observed by staff or any medication errors.

2. An ICF/DD using psychotropic medications on a regular basis shall have a written description of the use of psychotropic medications at the facility including:

a. a description of procedures to ensure that medications are used for therapeutic purposes and in accordance with accepted clinical practice;

b. a description of procedures to ensure that medications are used only when there are demonstrable benefits to the individual unobtainable through less restrictive measures;

c. a description of procedures to ensure continual review of medication and discontinuation of medication when there are no demonstrable benefits to the individual; and

d. a description of an ongoing program to counsel individual's and, where appropriate, their families on the potential benefits and negative side-effects of medication and to involve individuals and, where appropriate, their families in decisions concerning medication.

3. An ICF/DD shall ensure that medications are either self-administered or administered by qualified persons according to state law.

4. A medication shall not be administered to any individual for whom the medication has not been ordered.

5. An ICF/DD shall ensure that medication is used for therapeutic and medical purposes only and are not administered in excessive dosages.

6. Medication shall not be used as a disciplinary measure, a convenience for staff or as a substitute for adequate, appropriate programming.

E. Nursing Services

1. An ICF/DD shall ensure that individuals are provided with nursing services, in accordance with their needs.

2. Nursing services to individuals shall include, as appropriate, registered nurse participation in:

a. the pre-admission study;

b. the service plan and any reviews and revisions of the service plan;

c. the development of aftercare plans;

d. the referral of individuals to appropriate community resources;

e. training in habits in personal hygiene, family life, and sex education (including family planning and venereal disease counseling);

f. control of communicable diseases and infections through identification and assessment, reporting to medical authorities and implementation of appropriate protective and preventive measures; and

g. modification of the nursing part of the service plan, in terms of the individual's daily needs, at least annually for adults and more frequently for children, in accordance with developmental changes.

3. A registered nurse shall participate, as appropriate, in the planning and implementation of training of direct service personnel including training in:

a. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

b. basic skills required to meet the health needs and problems of the individual; and

c. first aid in the event of accident or illness.

4. An ICF/DD shall have available sufficient, appropriately licensed and qualified nursing staff, which may include licensed practical nurses and other supporting personnel, to carry out the various nursing service activities. The ICF/DD shall verify that all nursing staff has a current Louisiana license upon hire and at least annually.

5. The individual responsible for the delivery of nursing services shall have knowledge and experience in the field of developmental disabilities.

6. Nursing service personnel at all levels of experience and competence shall be assigned responsibilities in accordance with their qualifications, delegated authority commensurate with their responsibility and provided appropriate professional nursing supervision.

F. Pharmacy Services

1. An ICF/DD shall ensure that pharmacy services are provided under the direction of a qualified licensed pharmacist.

2. There shall be a formal arrangement for qualified pharmacy services, including provisions for emergency service.

3. The pharmacist shall:

a. receive the original, or a direct copy of the physician's drug treatment order;

b. maintain for each individual an individual record of all medications (prescription and nonprescription) dispensed, including quantities and frequency of refills);

c. participate, as appropriate, in the continuing interdisciplinary evaluation of individuals for the purposes of initiation, monitoring, and follow-up of service plans; and

d. establish quality specifications for drug purchases and ensure that they are met.

4. Qualified pharmacy or medical personnel shall:

a. quarterly review the record of each individual on medication for potential adverse reactions, allergies,

interactions, contraindications, rationality and laboratory test modifications; and

b. advise the physician of any recommended changes, stating the reasons for such changes and providing an alternate drug regimen.

5. Poisons, drugs used externally and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations.

6. Medications that are stored in a refrigerator containing things other than drugs shall be kept in a separate compartment with proper security.

7. If there is a drug storeroom, there shall be an inventory of all drugs kept in such storeroom.

8. Discontinued and outdated drugs, and containers with worn, illegible, or missing labels, shall be removed and returned to the pharmacist for proper disposition.

9. There shall be an effective drug recall procedure that can be readily implemented.

10. There shall be a procedure for reporting adverse drugs to the Federal Food and Drug Administration.

11. An ICF/DD shall have written policies and procedures that govern the safe administration and handling of all drugs developed by the responsible pharmacist, physician, nurse and other professional staff, as appropriate to the ICF/DD.

12. An ICF/DD shall have a written policy governing the self-administration of both prescription and nonprescription drugs.

13. The compounding, packaging, labeling and dispensing of drugs, including samples and investigational drugs, shall be done by the pharmacist or under his supervision, with proper controls and records.

14. Each drug shall be identified up to the point of administration.

15. Whenever possible, drugs that require dosage measurement shall be dispensed by the pharmacist in a form ready to administer to the individual.

16. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

17. All drugs shall be kept under lock and key except when authorized personnel are in attendance.

18. The security requirements for drugs of Federal and State laws shall be satisfied in storerooms, pharmacies, and living units.

G. Dental Services

1. An ICF/DD shall have an organized system for providing comprehensive diagnostic dental services for all individuals which include a complete extra and intra-oral examination, utilizing all diagnostic aids necessary to properly evaluate the individual's oral condition, within a period of 1 month following admission unless such an examination shall be in the individual's case record.

2. An ICF/DD shall have access to comprehensive dental treatment services for all individuals which include:

a. provision for dental treatment;

b. provision for emergency treatment on a 24-hour, seven-days-a-week basis by a qualified dentist; and

c. a recall system that will assure that each individual is re-examined at specified intervals in accordance with his/her needs, but at least annually.

3. An ICF/DD shall have a dental hygiene program that includes imparting information regarding nutrition and diet control measures to individuals and staff, instruction of individuals and staff in living units in proper oral hygiene methods and instructions of family in the maintenance of proper oral hygiene, where appropriate.

4. Dental progress reports shall be entered in the individual's case record.

5. A copy of the permanent dental record shall be provided to an ICF/DD to which an individual is transferred.

6. There shall be available sufficient, appropriately qualified dental personnel and necessary supporting staff to carry out the dental services programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8555. Professional and Specialized Programs and Services

A. General

1. An ICF/DD shall have access to the following services in accordance with the needs of individuals:

- a. physical and/or occupational therapy;
- b. speech pathology and audiology;
- c. psychological services;
- d. social work services; and
- e. training and habilitation services.

2. An ICF/DD shall ensure the following with regard to professional and special services:

- a. provide services directly through personal contact with the individual;
- b. provide services indirectly through contact with staff members and others working with the individual;
- c. develop and record appropriate plans, goals and objectives for the individual and, as appropriate, the individual's family;
- d. record all significant contacts with the individual;
- e. periodically provide written summaries of the individual's response to the service, the individual's current status relative to the service and the individual's progress to be maintained in the individual's case record;
- f. participate, as appropriate, in the development, implementation and review of service plans and aftercare plans and in the interdisciplinary team responsible for developing such plans; and
- g. provide services appropriately integrated into the overall program.

3. An ICF/DD shall ensure that any professional or special service provided by the ICF/DD has:

- a. adequately qualified and, where appropriate, appropriately licensed or certified staff according to state or federal law;
- b. adequate space and facilities;
- c. appropriate equipment;
- d. adequate supplies; and
- e. appropriate resources.

4. An ICF/DD shall ensure that any professional or special service provided by a person or agency outside the ICF/DD meets all relevant requirements contained herein.

B. Physical Therapy and Occupational Therapy

1. Physical therapy and occupational therapy staff shall provide treatment training programs that are designed to:

a. preserve and improve abilities for independent functioning, such as range of motion, strength, tolerance, coordination and activities of daily living;

b. prevent, insofar as possible, irreducible or progressive disabilities, through means such as the use of orthopedic and prosthetic appliances, assistance and adaptive devices, positioning, behavior adaptations and sensory stimulation.

2. The therapist shall function closely with the individual's primary physician and with other medical specialists.

3. Physical and occupational therapy personnel shall be:

a. assigned responsibilities in accordance with their qualifications;

b. delegated authority commensurate with their responsibilities; and

c. provided appropriate professional direction and consultation.

C. Speech Pathology and Audiology

1. Speech pathology and audiology services available to the ICF/DD shall include:

a. screening and evaluation of individuals with respect to speech and hearing functions;

b. comprehensive audiological assessment of individuals as indicated by screening results, to include tests of pure tone air and bone conduction, speech audiometry and other procedures, as necessary, and to include assessment of the use of visual cues;

c. assessment of the use of amplification;

d. provision for procurement, maintenance and replacement of hearing aids, as specified by a qualified audiologist;

e. comprehensive speech and language evaluation of residents, as indicated by screening results, including appraisal of articulation, voice, rhythm, and language;

f. treatment services, interpreted as an extension of the evaluation process, that include:

i. direct counseling with individuals, consultation with appropriate staff for speech improvement and speech education activities;

ii. collaboration with appropriate staff to develop specialized programs for developing the communication skills of individuals in comprehension; and

iii. expression and participation in in-service training programs for direct care and other staff.

2. Adequate, direct and continuing supervision shall be provided to personnel, volunteers or supportive personnel utilized in providing speech pathology and audiology services.

D. Psychological Services

1. An ICF/DD shall provide psychological services, as appropriate, to the needs of the individual, including strategies to maximize each individual's development of:

a. perceptual skills;

b. sensorimotor skills;

c. self-help skills;

d. communication skills;

e. social skills;

f. self direction;

g. emotional stability;

h. effective use of time (including leisure time); and

i. cognitive skills.

2. There shall be available sufficient, appropriately qualified psychological services staff, and necessary supporting personnel, to carry out the following functions:

a. psychological services to individuals, including evaluation, consultation, therapy, and program development; administration and supervision of psychological services; and

b. participation in direct service staff training.

3. Psychologists providing services to the ICF/DD shall have at least a master's degree from an accredited program and appropriate experience or training.

E. Social Work Services

1. Social services as part of an interdisciplinary spectrum of services shall be provided to an individual through the use of social work methods directed toward:

a. maximizing the social functioning of each individual;

b. enhancing the coping capacity of his family; and

c. asserting and safeguarding the human and civil rights of individuals and their families and fostering the human dignity and personal worth of each individual.

2. During the evaluation process, which may or may not lead to admission, social workers shall help the individual and family to consider alternative services and make a responsible choice as to whether and when placement is needed.

3. During the individual's admission to and residence in the ICF/DD or while the individual is receiving services from the ICF/DD, social workers shall, as appropriate, be the liaison between the individual, the ICF/DD, the family, and the community in order to:

a. assist staff in understanding the needs of the individual and his/her family in relation to each other;

b. assist staff in understanding social factors in the individual's day-to-day behavior, including staff-individual relationships;

c. assist staff in preparing the individual for changes in his/her living situation;

d. help the family to develop constructive and personally meaningful ways to support the individual's experience in the ICF/DD through counseling concerned with problems associated with changes in family structure and functioning, and referral to specific services, as appropriate; and

e. help the family to participate in planning for the individual's return to home or other community placement.

4. After the individual leaves the ICF/DD, the ICF/DD's social workers shall provide systematic follow-up to assure referral to appropriate community ICF/DDs.

F. Training and Habilitation Services

1. Training and habilitation services, defined as the facilitation of or preventing the regression of the intellectual, sensorimotor and affective development of the individual, shall be available to all individuals, regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps.

2. Individual evaluations relative to training and habilitation shall:

a. be based upon the use of empirically reliable and valid instruments, whenever such tools are available;

- b. provide the basis for prescribing an appropriate program of training experiences for the individual; and
 - c. identify priority areas to be addressed.
3. There shall be written training and habilitation objectives for each individual that are:
 - a. based upon complete and relevant diagnostic and prognostic data; and
 - b. stated in specific behavioral terms that permit the progress of the individual to be assessed.
 4. There shall be evidence of training and habilitation services activities designed to meet the training and habilitation objectives set for every individual.
 5. There shall be a functional training and habilitation record for each individual maintained by, and available to, the training and habilitation staff.
 6. Appropriate training and habilitation programs shall be provided to individuals with hearing, vision, perceptual or motor impairments, in cooperation with appropriate staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8557. Transportation

- A. The ICF/DD shall ensure that each individual is provided with the transportation necessary for implementing the individual's service plan.
- B. The ICF/DD shall have means of transporting individuals in cases of emergency.
- C. The provider shall have documentation of liability insurance coverage for all owned and non-owned vehicles used to transport individuals. Employee's personal liability insurance shall not be substituted for required coverage.
- D. Any vehicle used in transporting individuals in care of the ICF/DD, whether such vehicle is operated by a staff member or any other person acting on behalf of the ICF/DD, shall be properly licensed and inspected in accordance with State law. All vehicles used for the transportation of clients shall be maintained in a safe condition, be operated at a temperature that does not compromise the health, safety, or needs of the individuals, and be operated with all applicable motor vehicle laws.
- E. The provider shall have documentation of completion of a safe driving course for each employee who transports clients. Employees shall complete a safe driving course within 90 days of hiring, every three years and within 90 days of any traffic violation.
- F. The provider shall conduct a driving history record upon hire and yearly thereafter.
- G. Any staff member of the ICF/DD or other person acting on behalf of the ICF/DD operating a vehicle for the purpose of transporting individuals shall be properly licensed to operate that class of vehicle, according to state law.

H. The ICF/DD shall not allow the number of persons in any vehicle used to transport individuals to exceed the number of available seats with seatbelts in the vehicle.

I. Identification of vehicles used to transport individuals in care of an ICF/DD shall not be of such nature to embarrass or in any way produce notoriety for individuals.

J. The ICF/DD shall ascertain the nature of any need or problem of an individual which might cause difficulties during transportation, such as seizures, a tendency towards motion sickness or a disability. The ICF/DD shall

communicate such information to staff transporting clients; any such needs shall be addressed by the provider.

K. The following additional arrangements are required for an ICF/DD serving individuals who use wheelchairs.

1. A ramp device to permit entry and exit of an individual from the vehicle shall be provided for all vehicles normally used to transport persons with disabilities. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency, unless the mechanical lift has a manual override.

2. Wheelchairs used in transit shall be securely fastened inside the vehicle utilizing approved wheelchair fasteners.

3. The arrangement of the wheelchairs shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter E. Client Protections

§8565. Client Rights

A. Civil Rights

1. An ICF/DD shall have written policy on individual civil rights and shall post and distribute a copy of those. This policy shall give assurances that:

- a. an individual's civil rights are not abridged or abrogated solely as a result of placement in the ICF/DD's program;

- b. an individual's civil rights are protected through accessibility of legal counsel; and

- c. an individual is not denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, religion, ethnic background or disability.

2. An ICF/DD accepting any individual who resides in another state shall comply with the terms Compact on Juveniles, the Interstate Compact on the Placement of Children, and the Interstate Compact on Mental Health.

B. Basic Rights

1. All agencies must conform to applicable state laws and DHH policies and procedures relative to consumer rights, including but not limited to, those concerning confidentiality of client information and grievance procedures and client's right to appeal departmental decisions on service eligibility, planning, and delivery.

2. All agencies must conform to applicable state laws and DHH policies and procedures regarding consumer health and safety including but not limited to those concerning transporting individuals and abuse/neglect reporting.

3. There must be written policies and procedures that protect the client's welfare including the means by which the protections will be implemented and enforced.

4. The client, client's family or legal guardian, where appropriate, must be informed of their rights both verbally and in writing in language the consumer is able to understand.

5. The written policies and procedures, at a minimum, must address the following protections and rights:

- a. to human dignity;

- b. to acceptance of chosen life style;

- c. to impartial access to treatment regardless of race, religion, sex, ethnicity, age or disability;

- d. cultural access is evidenced through provision of:
 - i. interpretive services;

- ii. translated material;
 - iii. use of native language and staff when possible;
- and
- iv. staff trained in cultural awareness;
- e. access to persons with special needs is evidenced through sign language interpretation and mechanical aids and devices that assist those persons in achieving maximum benefit from services;
- f. to privacy;
 - g. to confidentiality and access to consumer records including:
 - i. requirement for the consumer's written, informal consent for release of information;
 - ii. emergency unauthorized release;
 - iii. internal access to consumer records;
 - iv. external access to consumer records; and
 - v. conditions for consumer access to his/her records;
 - h. to a complete explanation of the nature of services and procedures to be received including risks, benefits and available alternative services;
 - i. to participate, actively, in services including assessment/reassessment, service plan development, and transition/closure;
 - j. to refuse specific services or participate in any activity that is against their will and for which they have not given consent;
 - k. to complaint/grievance procedures;
 - l. to be informed of the financial aspect of services;
 - m. to be informed of the need for parental or guardian consent for treatment of services, if appropriate;
 - n. to manage, personally, financial affairs unless legally determined otherwise;
 - o. to give informed written consent prior to being involved in research projects;
 - p. to refuse to participate in any research project without compromising access to services;
 - q. to protection from harm including any form of abuse, neglect, or mistreatment;
 - r. to receive services in a safe and humane environment;
 - s. to receive the least intrusive services appropriate and available;
 - t. to contact any advocacy resources as needed, especially during grievance procedures; and
 - u. to be informed of the right to freely choose ICF/DDs from those available.

6. An ICF/DD must ensure that individuals are provided all rights available to them be they interdicted or not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38: **§8567. Grievances**

A. An ICF/DD shall have a written grievance procedure for individuals designed to allow individuals to make complaints without fear of retaliation.

B. The ICF/DD shall make every effort to ensure that all individuals and their legally responsible person are aware of and understand the grievance procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8569. Behavior Management

A. Description of Methods Used

1. The ICF/DD shall have a written description of the methods of behavior management to be used on a facility-wide level. This description shall include:

- a. definitions of appropriate and inappropriate behaviors of individuals; and
- b. acceptable staff responses to inappropriate behaviors.

2. The description shall be provided to all the ICF/DD's staff.

3. An ICF/DD shall have a clearly written list of rules and regulations governing conduct for individuals in care of the ICF/DD. These rules and regulations shall be made available to each staff member, each individual and, where appropriate, the legally responsible person.

B. Any behavior management plan that limits the rights of the individual shall be approved by the Human Rights Committee and consented to by the client or his/her representative or guardian.

C. Prohibition on Potentially Harmful Responses. An ICF/DD shall prohibit the following responses to individuals by staff members:

- 1. any type of physical hitting or other painful physical contact except as required for medical, dental or first aid procedures necessary to preserve the individual's life or health;
- 2. requiring an individual to take an extremely uncomfortable position;
- 3. verbal abuse, ridicule or humiliation;
- 4. withholding of a meal, except under a physician's order;
- 5. denial of sufficient sleep, except under a physician's order;
- 6. requiring the individual to remain silent for a long period of time;
- 7. denial of shelter, warmth, clothing or bedding;
- 8. assignment of harsh physical work;
- 9. physical exercise or repeated physical motions;
- 10. denial of usual services; and
- 11. denial of visiting or communication with family.

D. Time-Out Procedures

1. An ICF/DD with eight beds or less shall not use time out procedures.

2. An ICF/DD using time-out procedures involving seclusion of individuals in an unlocked room for brief periods shall have a written policy governing the use of time-out procedures. This policy shall ensure that time-out procedures are used only when less restrictive measures are not feasible;

3. Written orders by a physician for time-out procedures shall state the reasons for using time-out and the terms and conditions under which time-out will be terminated or extended, specifying a maximum duration of the use of the procedure which shall under no circumstances exceed one hour.

4. Emergency use of time-out shall be approved by the administrator or his/her designee for a period not to exceed one hour. The ICF/DD shall immediately notify the

individual's physician if emergency use of time-out is implemented.

5. When an individual is in time-out, a staff member shall exercise direct physical observation of the individual.

6. An individual in time-out shall not be denied access to bathroom facilities.

7. An ICF/DD shall not use time out on an as needed basis.

E. Restraints

1. The facility may employ physical restraints only:

a. as an integral part of an individual program plan that is intended to lead to less restrictive means of managing and eliminating the behavior for which the restraint is applies;

b. as an emergency measure, but only if absolutely necessary to protect the client or others from injury; or

c. as a health related protection prescribed by a physician, but only if absolutely necessary during the conduct of a specific medical or surgical procedure, or only if absolutely necessary for client protection during the time that a medical condition exists.

2. Authorization to use or extend restraints as an emergency measure must be:

a. in effect no longer than 12 consecutive hours; and

b. obtained as soon as the client is restrained or stable.

3. The facility shall not issue orders for restraint on a standing or as needed basis.

4. A client placed in restraints shall be checked at least every 30 minutes by staff trained in the use of restraints, released from the restraint as quickly as possible, and a record of these checks and usage shall be kept.

5. Restraints shall be designed and used so as not to cause physical injury to the client and so as to cause the least possible discomfort.

6. Opportunity for motion and exercise shall be provided and a record of such activity must be kept.

7. Barred enclosures shall not be more than three feet in height and must not have tops.

F. Human Rights Committee. The facility must designate and use a specially constituted committee or committees consisting of members of facility staff, parents, legal guardians, clients (as appropriate), qualified persons who have either experience or training in contemporary practices to change inappropriate client behavior and persons with no ownership or controlling interest in the facility to:

1. review, approve, and monitor individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to client protection and rights;

2. insure that these programs are conducted only with the written informed consent of the client, parents (if the client is a minor) or legal guardian; and

3. review, monitor and make suggestions to the facility about its practices and programs as they relate to drug usage, physical restraints, time-out rooms, application of painful or noxious stimuli, control of inappropriate behavior, protection of client rights and funds, and any other areas that the committee believes need to be addressed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter F. Provider Responsibilities

§8575. General Provisions

Reserved.

§8577. Staffing Requirements

A. An ICF/DD shall have a written plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members.

1. Recruitment. An ICF/DD shall employ qualified persons.

2. Screening

a. An ICF/DD's screening procedures shall address the prospective employee's qualifications, ability, related experience, health, character, emotional stability and social skills as related to the appropriate job description.

b. Prior to employing any person and upon obtaining a signed release and the names of the references from the potential employee, an ICF/DD shall obtain written references or phone notes on oral references from three persons.

3. Orientation. An ICF/DD's orientation program shall provide training for new employees to acquaint them with the philosophy, organization, program, practices and goals of the facility and shall include instruction in safety and emergency procedures and in the specific responsibilities of the employee's job.

4. Training

a. An ICF/DD shall ensure that each direct service worker participates in in-service training each year. Orientation training and activities related to routine supervision of the employee's tasks shall not be considered for the purposes of this requirement.

b. An ICF/DD shall document that all employees receive training on an annual basis in:

i. emergency and safety procedures;

ii. the principles and practices of individual care;

iii. the ICF/DD's administrative procedures and programmatic goals;

iv. individual rights; and

v. procedures and legal requirements concerning the reporting of abuse and critical incidents.

c. Direct service workers shall, in addition, receive training in acceptable behavior management techniques, crisis management and passive physical restraint.

d. An ICF/DD shall train staff to ensure the immediate accessibility of appropriate first aid supplies in the living units of the ICF/DD.

5. Evaluation

a. An ICF/DD shall undertake an annual performance evaluation of all staff members.

b. For any person who interacts with individuals, an ICF/DD's performance evaluation procedures shall address the quality and nature of a staff member's relationship with individuals.

6. Personnel Practices

a. An ICF/DD shall have written personnel policies and written job descriptions for each staff position.

b. An ICF/DD shall have a written employee grievance procedure.

c. An ICF/DD shall have a written policy on abuse reporting procedures that require all employees to report any

incidents of abuse or mistreatment whether that abuse or mistreatment is done by another staff member, a family member, a resident or any other person.

B. Number and Qualifications of Staff

1. An ICF/DD shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to ensure that the responsibilities the ICF/DD undertakes are carried out and to adequately perform the following functions:

- a. administrative functions;
- b. fiscal functions;
- c. clerical functions;
- d. housekeeping, maintenance and food service functions;
- e. direct service worker functions;
- f. supervisory functions;
- g. record keeping and reporting functions;
- h. social service functions;
- i. ancillary service functions; and
- j. medication and treatment administration functions.

2. An ICF/DD shall ensure that all staff members are properly certified and/or licensed as legally required.

3. An ICF/DD shall ensure that an adequate number of qualified direct service staff are present with the individuals as necessary to ensure the health, safety and well-being of individuals. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the ICF/DD and the ages and needs of the individuals.

4. An ICF/DD shall not knowingly hire or continue to employ any person whose health, educational achievement, emotional or psychological makeup impairs his/her ability to properly protect the health and safety of the individuals or is such that it would endanger the physical or psychological well-being of the individuals. This requirement is not to be interpreted to exclude continued employment in areas other than direct service capacities of persons undergoing temporary medical or emotional problems.

C. External Professional Services. An ICF/DD shall obtain any required professional services not available from employees of the ICF/DD and shall have documentation of access to such services either in the form of a written agreement with an appropriately qualified professional or a written agreement with the state for required resources.

D. Volunteers/Student Interns. An ICF/DD which utilizes volunteers or student interns on a regular basis shall have a written plan using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

1. be directly supervised by a paid staff member;
2. be oriented and trained in the philosophy of the facility and the needs of individuals, and methods of meeting those needs;
3. be subject to character and reference checks similar to those performed for employment applicants upon obtaining a signed release and the names of the references from the potential volunteer/intern student; and
4. be aware of and be briefed on any special needs or problems of individuals.

E. Direct Care Staff

1. All non-licensed direct care staff must meet minimum mandatory qualifications and requirements for

direct service workers as required by R.S. 40:2179 through R.S. 40:2179.1 or a subsequently amended statute and be screened for eligibility for employment on the Louisiana Direct Service Worker Registry.

2. A provider shall ensure that each direct care staff completes no less than 16 hours of supervised classroom training per year to ensure continuing competence. The training must address areas of weakness as determined by the workers' performance reviews and may address the special needs of clients. Orientation and normal supervision shall not be considered for meeting this requirement.

3. All direct care staff shall be trained in recognizing and responding to medical emergencies of clients.

F. Staff Communications

1. An ICF/DD shall establish procedures to assure adequate communication among staff to provide continuity of services to the individual receiving services. This system of communication shall include:

- a. a regular review of individual and aggregate problems of individuals including actions taken to resolve these problems;
- b. sharing of daily information noting unusual circumstances and other information requiring continued action by staff; and
- c. records maintained of all accidents, personal injuries and pertinent incidents related to implementation of individual's service plans.

2. Any employee of an ICF/DD working directly with individuals in care shall have access to information from individual case records that is necessary for effective performance of the employee's assigned tasks.

3. An ICF/DD shall establish procedures which facilitate participation and feedback by staff members in policy-making, planning and program development for individuals receiving services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8579. Staffing-Qualified Professional and Qualified Mental Retardation Professional

A. A qualified professional (QP) is:

1. a psychologist with at least a master's degree from an accredited program and specialized training or two years experience in treating mentally retarded, emotionally disturbed or learning disabled children whose condition is similar to the condition of the individuals being served; or
2. a physician licensed under state law to practice medicine or osteopathy and with specialized training or two years experience in treating emotionally disturbed, mentally retarded or learning disabled children whose condition is similar to that of the individuals being served.

B. Qualified mental retardation professional (QMRP) is a professionally qualified person responsible for overseeing the implementation of an individual's service plan. A QMRP is a person who has specialized training or one year of experience in training or one year of experience in treating or working with the mentally retarded and is one of the following:

1. a psychologist with a master's degree from an accredited program;
2. a licensed doctor of medicine or osteopathy;

3. an educator with a degree in education from an accredited program;

4. a social worker shall be:

a. a person with a bachelor's degree in social work from an accredited program;

b. a person who has at least one year of experience working directly with handicapped persons in the appropriate area of handicapping conditions; and is:

i. a physician;

ii. a registered nurse;

iii. an occupational therapist who:

(a). is eligible for certification as an occupational therapist (OTR) by the American Occupational Therapy association; or

(b). is a graduate of an occupational therapist educational program accredited jointly by the American Occupational Therapy association and the committee on allied Health Education and accreditation of the American Medical Association;

iv. an occupational therapy assistant who:

(a). is eligible for certification as a certified occupational therapy assistant (COTA) by the American Occupational Therapy Association; or

(b). is a graduate of an occupational therapy assistant program accredited by the American Occupational Therapy association;

v. a physical therapist that is licensed by the state in which he/she practices;

vi. a physical therapy assistant who is a graduate of a two year college-level program approved by the American Physical Therapy association;

vii. a psychologist who has at least a Master's degree in psychology, from an accredited program;

viii. a social worker who:

(a). is licensed, if applicable by the state in which practicing;

(b). has a degree from a school of social work accredited or approved by the Council on Social Work Education; or

(c). has graduated from a college or university with a Bachelor of Social Work degree accredited or approved by the Council on Social Work Education;

ix. a speech-language pathologist or audiologist who:

(a). is licensed, if applicable, by the state in which practicing; and

(b). is eligible for a certificate of clinical competence in speech and language pathology or audiology granted by the American Speech, Language, and Hearing Association under its requirements in effect on the publication of this provision; or

(c). meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification;

x. a recreation staff member with a bachelor's degree in recreation, or in a specialty area such as art, dance, music or physical education;

xi. a music therapist who:

(a). has a four year undergraduate degree in music therapy;

(b). has at least 6 months experience in the field of music therapy; and

(c). is registered with the National Association for Music Therapy or the American Association for Music Therapy; or

xii. a human services professional with at least a bachelor's degree in a human services field (such as psychology, sociology, special education, rehabilitation counseling, juvenile justice, corrections, etc.); or

c. a person in a field other than social work and at least three years of social work experience under the supervision of a qualified social worker;

5. a physical or occupational therapist as defined in federal regulations;

6. a speech pathologist or audiologist as defined by federal regulations;

7. a registered nurse;

8. a therapeutic recreation specialist who:

a. is a graduate of an accredited program; and

b. is licensed by the state; or

9. a rehabilitation counselor who is certified by the Committee on Rehabilitation Counselor Certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8581. Record Keeping

A. Accounting and Record Keeping

1. An ICF/DD shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

2. An ICF/DD shall demonstrate fiscal accountability through regular recording of its finances and an annual external audit.

3. An ICF/DD shall not permit funds to be paid, or committed to be paid, to any person to which any of the members of the governing body, administrative personnel, or members of the immediate families have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the ICF/DD. The ICF/DD shall have a written disclosure of any financial transaction with the facility in which a member of the governing body, administrative personnel, or his/her immediate family is involved.

4. An ICF/DD shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

5. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of according to state laws.

6. An ICF/DD shall have sufficient space, facilities and supplies for providing effective record keeping services.

B. Confidentiality and Security of Files

1. An ICF/DD shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of the records and to whom records may be released. Records shall be the property of the ICF/DD and the ICF/DD, as custodian, shall secure records against loss, tampering or unauthorized use.

2. An ICF/DD shall maintain all individuals' case records in accordance with federal and state law, rule, and regulation regarding confidentiality, privacy and retention.

Employees of the ICF/DD shall not disclose or knowingly permit the disclosure of any information concerning the individual receiving services or his/her family, directly or indirectly, to any unauthorized person.

3. When the individual receiving services is of majority age and non-interdicted, an ICF/DD shall obtain the individual's written, informed permission prior to releasing any information from which the individual receiving services or his/her family might be identified except for authorized State and Federal agencies and another ICF/DD with professional interest in the individual.

4. When the individual is a minor or is interdicted, the ICF/DD shall obtain written, informed consent from the parent(s), tutor or curator prior to releasing any information from which the individual receiving services might be identified except for authorized state and Federal agencies and another ICF/DD with professional interest in the individual.

5. An ICF/DD shall, upon request, make available information in the case record to the individual receiving services, the legally responsible person or legal counsel of the individual. If, in the professional judgment of the administration of the ICF/DD, it is felt that information contained in the record would be damaging to an individual receiving services, that information may be withheld from the individual requesting the information except under court order.

6. An ICF/DD may use material from case records for teaching or research purposes, development of the governing body's understanding and knowledge of the ICF/DD's services, or similar educational purposes, provided that names are deleted and other identifying information is disguised or deleted.

7. Individual records shall be retained in accordance with state and/or federal regulations.

C. Individual's Case Record. An ICF/DD shall have a written record for each individual receiving services, which shall include administrative, treatment, and educational data from the time of admission until the time the individual leaves the ICF/DD. An individual's case record shall include:

1. the name, sex, race, religion, birth date and birthplace of the individual;
2. the individual's history including, where applicable, family data, educational background, employment record, prior medical history and prior placement history;
3. a copy of the individual's service plan and any modifications thereto and an appropriate summary to guide and assist direct service workers in implementing the individual receiving services program;
4. the findings made in periodic reviews of the plan, including a summary of the successes and failures of the individual receiving services program and recommendations for any modifications deemed necessary;
5. monthly status reports;
6. a copy of the aftercare plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;
7. when restraint in any form other than passive physical restraint has been used, a signed order for each use of restraint issued by a qualified professional prior to such use;

8. critical incident reports;
9. reports of any individual's grievances and the conclusions or dispositions of these reports;
10. a summary of family visits and contacts; and
11. a summary of attendance and leaves of absence from the ICF/DD.

D. Medical and Dental Records

1. An ICF/DD shall maintain complete health records of an individual receiving services, which shall include:

- a. a complete record of all immunizations provided; a record of any medication;
- b. records of vision, physical or dental examinations; and
- c. a complete record of any treatment provided for specific illness or medical emergencies.

2. Upon discharge, the ICF/DD shall provide a summary of the individual's health record to the person or agency responsible for the future planning and care of the individual receiving services.

3. An ICF/DD shall make every effort to compile a complete past medical history on every individual receiving services. This history shall, whenever possible, include:

- a. allergies to medication;
- b. immunization history;
- c. history of serious illness, serious injury or major surgery;
- d. developmental history;
- e. current use of prescribed medication;
- f. current use of alcohol or non-prescribed drugs; and
- g. medical history.

E. Retention of Records. The ICF/DD provider shall retain all client records for a period of six years after the date of the client's discharge, transfer or death.

F. Staff Personnel File

1. An ICF/DD shall maintain a personnel file for each employee. At a minimum, this file shall contain the following:

- a. the application for employment and/or resume;
- b. a criminal history check, prior to an offer of employment, in accordance with state law;
- c. reference letters from former employer(s) and personal references or phone notes on such references;
- d. documentation of any state or federally required medical examinations or medical testing;
- e. evidence of applicable professional credentials/certifications according to state law;
- f. annual performance evaluations;
- g. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the facility;
- h. employee's hire and termination dates; and
- i. documentation of orientation and annual training of staff.

2. The staff member shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

3. An ICF/DD shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8583. Client Funds and Assets

A. Money and Personal Belongings

1. An ICF/DD shall permit and encourage an individual to possess his/her own money either by giving an allowance and/or by providing opportunities for paid work, unless otherwise indicated by the individual's service plan and reviewed every 30 days by the prime worker.

2. Money earned, received as a gift or received as allowance by an individual shall be deemed to be that individual's personal property.

3. Limitations may be placed on the amount of money an individual may possess or have unencumbered access to when such limitations are considered to be in the individual's best interests and are duly recorded in the individual's service plan.

4. An ICF/DD shall, as appropriate to the individual's age and abilities, provide training in budgeting, shopping and money management.

5. An ICF/DD shall allow an individual to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the individual's service plan. However, the ICF/DD shall, as necessary, limit or supervise the use of these items while the individual is in care. Where extraordinary limitations are imposed, the individual shall be informed by staff of the reasons, and the decision and reasons shall be recorded in the individual's case record. Reasonable provisions shall be made for the protection of the individual's property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8585. Abuse and Neglect

A. An ICF/DD shall have comprehensive, written procedure concerning individual abuse and neglect including:

1. a description of ongoing communication strategies used by the ICF/DD to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, reporting requirements and applicable laws;

2. a procedure ensuring immediate reporting of any suspected incident to the administrator or his/her designee and mandating an initial written summary on the incident to the administrator or his/her designee within 24 hours;

3. a procedure for ensuring that the individual is protected from potential harassment during the investigation and which accused staff shall be removed from direct care of individuals during the investigation; and

4. a procedure for disciplining staff members who abuse or neglect individuals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8587 Abuse/Neglect Reporting

A. An ICF/DD shall have written procedures for the reporting and documentation of deaths of individuals, injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incident and other

situations or circumstances affecting the health, safety or well-being of an individual or individuals.

B. Such procedures shall ensure timely verbal and written reports to the administrator.

C. When an incident involves abuse or neglect of an individual, death of an individual, or entails any serious threat to the individual's health, safety or well-being, an ICF/DD shall:

1. ensure immediate verbal reporting to the administrator or his/her designee and a preliminary written report within 24 hours of the incident;

2. ensure notification to designated representatives of the DHH Health Standards Section within 24 hours of occurrence or discovery of the incident. A final report must be submitted to HSS within five working days. Extensions may be granted on a case by case basis with good cause. The ICF/DD shall utilize the department's Online Tracking Incident System (OTIS). This requires that the ICF/DD maintain internet access and keeps the department informed of an active e-mail address. Reports to Health Standards Section utilizing OTIS should include the following:

- a. abuse and allegations of abuse;
- b. neglect and allegations of neglect; and
- c. major injuries of unknown source including, but

not limited to, fractures, burns, suspicious contusions, head injuries and unanticipated deaths;

3. ensure that other appropriate authorities are notified, according to state law;

4. ensure immediate, documented attempts to notify the legally responsible person of the individual;

5. ensure immediate attempts to notify other involved agencies and parties, as appropriate; and

6. ensure immediate notification of the appropriate law enforcement authority whenever warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8589. Quality of Life

A. Family Involvement

1. An ICF/DD shall have a written description of strategies used by the ICF/DD's program to foster ongoing positive communication and contact between individuals and their families, their friends and others significant people in their lives.

2. An ICF/DD shall have evidence that the individual's family and, where appropriate, the legally responsible person have been informed of:

- a. the philosophy and goals of the ICF/DD;
- b. behavior management and disciplinary practices of the ICF/DD;
- c. the ICF/DD's arrangements for individuals' participation in religious observances;
- d. any specific treatment or treatment strategy employed by the ICF/DD to be implemented for a particular individual;
- e. visiting hours, visiting rules and procedures, arrangements for home visits and procedures for communicating with individuals by mail or telephone;
- f. a procedure for registering complaints concerning the individual's care or treatment; and
- g. the name, telephone number and address of a staff person who may be contacted by the legally responsible

person to ask questions or register concerns on an ongoing basis.

B. Community Involvement. An ICF/DD shall have a written plan to foster participation by individuals in normal community activities to the degree possible considering the individual's level of functioning.

C. Communication and Visits. An ICF/DD shall have a written description of rules and procedures concerning telephone communications by individuals, sending and receiving of mail by individuals and visits to and from an individual's family and friends.

1. Telephone Communication

a. An ICF/DD shall allow an individual to receive and originate telephone calls subject only to reasonable rules and to any specific restrictions in the individual's service plan.

b. Any restriction on telephone communication in an individual's service plan must be formally approved by the prime worker and shall be reviewed every 30 days by the prime worker.

2. Mail

a. An ICF/DD shall allow individuals to send and receive mail unopened and unread by staff unless contraindicated by the individual's service plan and reviewed every 30 days by the prime worker.

b. An ICF/DD shall ensure that individuals have access to all materials necessary for writing and sending letters and shall, when necessary ensure that individuals who wish to correspond with others are given any required assistance.

3. Visits

a. An ICF/DD shall allow an individual to visit or be visited by family and friends subject only to reasonable rules and to any specific restrictions in the individual's service plan.

b. Special restrictions shall be imposed only to prevent serious harm to the individual. The reasons for any special restrictions shall be recorded in the individual's service plan. Special restrictions must be reviewed every 30 days by the prime worker and, if restrictions are renewed, the reasons for renewal shall be recorded in the individual's service plan.

D. Clothing

1. An ICF/DD shall ensure that individuals are provided with clean, well-fitted clothing appropriate to the season and to the individual's age, sex and individual needs.

2. Clothing shall be maintained in good repair.

3. All clothing provided to an individual shall go with the individual at discharge.

4. Clothing shall belong to the individual and not be shared in common.

E. Religion

1. An ICF/DD shall have a written description of its religious orientation, particular religious practices that are observed and any religious restrictions on admission. This description shall be provided to the individual, and where appropriate, the legally responsible person and the responsible agency.

2. Every individual shall be permitted to attend religious services in accordance with his/her faith. The ICF/DD shall, whenever possible, arrange transportation and

encourage participation by those individuals who desire to participate in religious activities in the community.

3. Individuals shall not be forced to attend religious services.

4. When the individual is a minor, the ICF/DD shall determine the wishes of the legally responsible person with regard to religious observance and instruction at the time of placement and shall make every effort to ensure that these wishes are carried out.

F. Work

1. An ICF/DD shall have a written description of the ICF/DD's approach to involving individuals in work including:

a. a description of any unpaid tasks required of individuals;

b. a description of any paid work assignments including the pay scales for such assignments;

c. a description of the ICF/DD's approach to supervising work assignments; and

d. assurance that the conditions and compensation of such work are in compliance with applicable state and federal laws.

2. An ICF/DD shall demonstrate that any individual work assignments are designed to provide a constructive experience for individuals and are not used as a means of performing vital ICF/DD functions at low cost.

3. All work assignments shall be in accordance with the individual's service plan.

4. An ICF/DD shall assign as unpaid work for individuals only housekeeping tasks similar to those performed in a normal home setting.

5. When an individual engages in off-grounds work, the ICF/DD shall document that:

a. such work is voluntary and in accordance with the individual's service plan;

b. the prime worker approved such work;

c. such work is supervised by qualified personnel;

d. the conditions and compensation of such work are in compliance with applicable state and federal laws; and

e. such work does not conflict with the individual's program.

G. Recreation and Activities Programs

1. An ICF/DD shall have a written plan for providing recreational services based on the individual needs, interests and functioning levels of individuals served. This plan shall ensure that a range of indoor and outdoor recreational and leisure opportunities are provided for individuals.

2. An ICF/DD shall utilize the recreational resources of the community whenever appropriate. The ICF/DD shall arrange the transportation and supervision required for maximum usage of community resources.

3. An ICF/DD shall have sufficient, adequately trained staff to carry out the stated objectives of the ICF/DD's recreation plan.

4. An ICF/DD which has recreation staff shall ensure that recreation staff are apprised of and, when appropriate, involved in the development and review of service plans.

H. Personal Care and Hygiene. An ICF/DD shall establish procedures to ensure that individuals receive training in good habits of personal care, hygiene and grooming.

I. Safety. An ICF/DD shall establish procedures to ensure that individuals receive training in safety and self protection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter G. Emergency Preparedness

§8595. Emergency Preparedness Plan

A. The ICF/DD shall have an emergency preparedness plan designed to manage the consequences of medical emergencies, power failures, fire, natural disasters, declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its emergency preparedness plan in the event or occurrence of a disaster or emergency. Upon the department's request, a facility shall present its emergency preparedness plan for review.

B. At a minimum the emergency preparedness plan shall include and address the following.

1. The emergency preparedness plan shall be individualized and site specific. All information contained in plan shall be current and correct. The plan shall be made available to representatives of the Office of the State Fire Marshal and the Office of Public Health upon request of either of these offices. The facility's plan shall follow all current applicable laws, standards, rules or regulations.

2. The facility's plan shall contain census information, including transportation requirements for the ICF/DD residents as to the need for:

- a. wheelchair accessible or para-transit vehicle transport; or
- b. the numbers of ICF/DD residents that do not have any special transport needs.

3. The plan shall contain a clearly labeled and legible master floor plan(s) that indicate the following:

- a. the areas in the facility that is to be used by residents as shelter or safe zones during emergencies;
- b. the location of emergency power outlets;
- c. the locations of posted, accessible, emergency information; and
- d. the detail of what will be powered by emergency generator(s), if applicable.

4. The facility's plan shall be viable and promote the health, safety and welfare of facility's residents.

5. The facility shall provide a plan for monitoring weather warnings and watches and evacuation orders from local and state emergency preparedness officials. This plan will include who will monitor, what equipment will be used, and procedures for notifying the administrator or responsible persons.

6. The plan shall provide for the delivery of essential care and services to residents during emergencies, who are housed in the facility or by the facility at another location, during an emergency.

7. The plan shall contain information about staffing for when the ICF/DD is sheltering in place or when there is an evacuation of the ICF/DD. Planning shall include documentation about staff that have agreed to work during an emergency and contact information for such staff. Plan shall include provisions for adequate, qualified staff as well

as provisions for the assignment of responsibilities and duties to staff.

8. The facility shall have transportation or arrangements for transportation for evacuation, hospitalization, or any other services which are appropriate. Transportation or arrangements for transportation shall be adequate for the current census and meet the ambulatory needs of the residents.

9. The plan shall include procedures to notify the resident's family or responsible representative whether the facility is sheltering in place or evacuating to another site. The plan shall include which staff are responsible for providing this notification. If the facility evacuates, notification shall include:

- a. the date and approximate time that the facility is evacuating; and
- b. the place or location to which the facility is evacuating, including the:
 - i. name;
 - ii. address; and
 - iii. telephone number.

10. The plan shall include the procedure or method whereby each facility resident has a manner of identification attached to his person which remains with him at all times in the event of sheltering in place or evacuation, and whose duty and responsibility this will be; the following minimum information shall be included with him:

- a. current and active diagnosis;
- b. medications, including dosage and times administered;
- c. allergies;
- d. special dietary needs or restrictions; and
- e. next of kin or responsible person and contact information.

11. The plan shall include an evaluation of the building and necessary systems to determine the ability to withstand wind, flood, and other local hazards that may affect the facility and should also include:

- a. if applicable, an evaluation of each generator's fuel source(s), including refueling plans and fuel consumption; and
- b. an evaluation of the facility's surroundings to determine lay-down hazards, objects that could fall on facility, and hazardous materials in or around the facility, such as:

- i. trees;
- ii. towers;
- iii. storage tanks;
- iv. other buildings;
- v. pipe lines;
- vi. chemicals;
- vii. fuels; and
- viii. biologics.

12. For ICF/DDs that are geographically located south of Interstate 10 or Interstate 12, the plan shall include the determinations of when the facility will shelter in place and when the facility will evacuate for a hurricane and the conditions that guide these determinations.

a. A facility is considered to be sheltering in place for a storm if the facility elects to stay in place rather than evacuate when located in the projected path of an approaching storm of tropical storm strength, or a tropical

cyclone. The facility has elected to take this action after reviewing all available and required information on the storm, the facility, the facility's surroundings and consultation with the local or parish Office of Homeland Security and Emergency Preparedness (OHSEP). The facility shall accept all responsibility for the health and well being of all residents that shelter with the facility before during and after the storm. In making the decision to shelter in place or evacuate the facility shall consider the following:

- i. what conditions will facility shelter for;
- ii. what conditions will facility close or evacuate for; and
- iii. when will these decisions be made.

b. If the facility shelters in place, the facility's plan shall include provisions for seven days of necessary supplies to be provided by the facility prior to emergency event, to include:

- i. drinking water or fluids; and
- ii. non-perishable food.

13. The facility's emergency plan shall include a posted communications plan for contacting emergency services and monitoring emergency broadcasts and whose duty and responsibility this will be.

14. The facility's plan shall include how the ICF/DD will notify OHSEP and DHH when the decision is made to shelter in place and whose responsibility it is to provide this notification.

15. The facility shall have a plan for an ongoing safety program to include:

- a. continuous inspection of the facility for possible hazards;
- b. continuous monitoring of safety equipment and maintenance or repair when needed;
- c. investigation and documentation of all accidents or emergencies;
- d. fire control and evacuation planning with documentation of all emergency drills (residents can be informed of emergency drills);
- e. all aspects of the facility's plan, planning, and drills shall meet the current requirements of the Office of the State Fire Marshal, and the Life Safety Code NFPA 101; and
- f. the facility shall inform the resident and/or responsible party of the facility's emergency plan and the actions to be taken.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8597. Emergency Plan Activation, Review and

Summary

A. The facility's emergency plan(s) shall be activated at least annually, either in response to an emergency or in a planned drill. All staff shall be trained and have knowledge of the emergency plan.

B. ICF/DDs must conduct a minimum of 12 fire drills annually with at least one every three months on each shift. In addition to drills for emergencies due to fire, the facility shall conduct at least one drill per year for emergencies due to a disaster other than fire, such as storm, flood, and other natural disaster.

1. All staff shall participate in at least one drill annually. Residents shall be encouraged to participate, but

the provider may not infringe upon the right of the resident to refuse to participate.

2. The facility shall test at least one manual pull alarm each month of the year and maintain documentation of test dates, location of each manual pull alarm tested, persons testing the alarm, and its condition.

C. Fire extinguishers shall be conspicuously hung, kept easily accessible, shall be visually examined monthly and the examination shall be recorded on a tag which is attached to the fire extinguisher. Fire extinguishers shall also be inspected and maintained in accordance with manufacturers' and applicable NFPA requirements. Each fire extinguisher shall be labeled to show the date of such inspection and maintenance.

D. The facility's performance during the activation of the plan shall be evaluated annually by the facility and the findings shall be documented in the plan.

E. The plan shall be revised if indicated by the facility's performance during the emergency event or the planned drill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8599. Notification of Evacuation, Relocation, or Temporary Cessation of Operations

A. In the event that an ICF/DD evacuates, temporarily relocates or temporarily ceases operations at its licensed location as a result of an evacuation order issued by the state, local or parish OHSEP, the ICF/DD must immediately give notice to the Health Standards Section as well as the Office for Citizens with Developmental Disabilities (OCDD) and OHSEP as directed by facsimile or email of the following:

1. the date and approximate time of the evacuation; and
2. the locations of where the residents have been placed and whether this location is an ICF/DD or other alternate host site for one or more of the ICF/DD residents.

B. In the event that an ICF/DD evacuates, temporarily relocates or temporarily ceases operations at its licensed location for any reason other than an evacuation order, the ICF/DD must immediately give notice to the Health Standards Section by facsimile or email of the following:

1. the date and approximate time of the evacuation; and
2. the locations of where the residents have been placed and whether this location is an ICF/DD or other alternate host site for one or more of the ICF/DD residents.

C. If there are any deviations or changes made to the locations of the residents that was given to the Health Standards Section, OCDD and OHSEP, then both Health Standards, OCDD and OHSEP shall be notified of the changes within 48 hours of their occurrence.

D. Procedures for emergencies shall specify persons to be notified, process of notification and verification of notification, locations of emergency equipment and alarm signals, evacuation routes, procedures for evacuating residents, procedures for reentry and recovery, frequency of fire drills, tasks and responsibilities assigned to all personnel, and shall specify medications and records to be taken from the facility upon evacuation and to be returned following the emergency.

E. An ICF/DD shall immediately notify the department and other appropriate agencies of any fire, disaster or other emergency that may present a danger to residents or require their evacuation from the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Chapter 86. Intermediate Care Facilities for Persons with Developmental Disabilities

§8601. Authority to Re-open After an Evacuation, Temporary Relocation or Temporary Cessation of Operation

A. In the event that an ICF/DD evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the state, local or parish OHSEP due to a declared disaster or other emergency and that facility sustains damages due to wind, flooding, precipitation, fire, power outages or other causes, the facility shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Department of Health and Hospitals, Health Standards Section and the facility has received a letter of approval from the department for reopening the facility. The purpose of these surveys is to assure that the facility is in compliance with the licensing standards including, but not limited to, the structural soundness of the building, the sanitation code, staffing requirements and the execution of emergency plans.

B. If an ICF/DD evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the state or parish OHSEP due to a declared disaster or other emergency and the facility does not sustain damages due to wind, flooding, precipitation, fire, power outages or other causes, the facility may be reopened without the necessity of the required surveys. Prior to reopening, the facility shall notify the Health Standards Section in writing that the facility is reopening.

C. The facility shall submit a written initial summary report upon request to the department's Health Standards Section. This report shall be submitted within 14 days from the date of evacuation which led to the facility having to evacuate, temporarily relocate or temporarily cease operations. The report shall indicate how the facility's emergency preparedness plan was followed and executed. The initial summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of the injuries and deaths.

D. If a facility shelters in place at its licensed location during a declared disaster or other emergency, the facility shall submit a written initial summary report upon request to the department's Health Standards Section. The report shall indicate how the facility's emergency preparedness plan was

followed and executed. This report shall be submitted within 14 days from the date of the event which caused the facility to shelter in place. The initial summary shall contain, at a minimum:

1. pertinent plan provisions and how the plan was followed and executed;
2. plan provisions that were not followed;
3. reasons and mitigating circumstances for failure to follow and execute certain plan provisions;
4. contingency arrangements made for those plan provisions not followed; and
5. a list of all injuries and deaths of residents that occurred during the execution of the plan, including the date, time, causes and circumstances of these injuries and deaths.

E. Upon request by the department's Health Standards Section, a report that is more specific and detailed regarding the facility's execution of their emergency plan shall be submitted to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8603. General Emergency Preparedness Training

A. All employees shall be trained in procedures to be followed in the event of any emergency situations. All employees shall be instructed in the use of fire-fighting equipment and resident evacuation as part of their initial orientation and at least annually thereafter. The ICF/DD shall instruct all employees on the emergency evacuation procedures. The ICF/DD shall review the procedures with existing staff at least once in each 12 month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8605. Inactivation of License Due to Declared Disaster or Emergency

A. A licensed ICF/DD in an area or areas which have been affected by an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

1. the licensed ICF/DD shall submit written notification to the Health Standards Section within 60 days of the date of the executive order or proclamation of emergency or disaster that:
 - a. the ICF/DD has experienced an interruption in the provision of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;
 - b. the licensed ICF/DD intends to resume operation as an ICF/DD in the same service area;
 - c. includes an attestation that the emergency or disaster is the sole casual factor in the interruption of the provision of services;
 - d. includes an attestation that all clients have been properly transferred to another provider; and
 - e. provides a list of each client and where that client is discharged or transferred to;
2. the licensed ICF/DD resumes operating as an ICF/DD in the same service area within one year of issuance

of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. the licensed ICF/DD continues to pay all fees and costs due and owed to the department, including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

4. the licensed ICF/DD continues to submit required documentation and information to the department, including, but not limited to cost reports.

B. Upon receiving a completed written request to inactivate an ICF/DD license, the department shall issue a notice of inactivation of license to the ICF/DD.

C. Upon completion of repairs, renovations, rebuilding or replacement of the facility, an ICF/DD which has received notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

1. the ICF/DD must submit a written license reinstatement request to the licensing agency of the department within one year of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

2. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing survey; and

3. the license reinstatement request must include a completed licensing application with appropriate licensing fees.

D. Upon receiving a completed written request to reinstate an ICF/DD license, the department shall conduct a licensing survey. If the ICF/DD meets the requirements for licensure and the requirements under this subsection, the department shall issue a notice of reinstatement of the ICF/DD license. The licensed bed capacity of the reinstated license shall not exceed the licensed bed capacity of the ICF/DD at the time of the request to inactivate the license.

E. No change of ownership in the ICF/DD shall occur until such ICF/DD has completed repairs, renovations, rebuilding or replacement construction and has resumed operation as an ICF/DD.

F. The provisions of the subsection shall not apply to an ICF/DD which has voluntarily surrendered its license and ceased operation.

G. Failure to comply with any of the provisions of this subsection shall be deemed a voluntary surrender of the ICF/DD license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Subchapter H. Physical Environment

§8609. Physical Plant

A. Accessibility. An ICF/DD's building, parking lots and facilities shall be accessible to and functional for individuals, staff members and the public, as required by applicable federal and state laws and regulations to include individuals with limited mobility and assistive devices.

B. New Construction or Renovation of Existing Facilities

1. Before beginning renovations or new construction, Health Standards Section must be notified. Plans and specifications must be prepared by a licensed architect or engineer and must be submitted for approval to the Office of

State Fire Marshal and any other office/entity designated by the department to review and approve the facility's architectural plans, if the facility must go through plan review, and the Office of Public Health.

2. Health Standards Section, the Office of Public Health, and the Office of State Fire Marshal, shall have the authority to inspect the project at any stage to insure that the approved plans and specifications are being followed. Final approval of the building must be obtained from these agencies after renovation or construction is completed and before it is occupied. A license shall be issued by Health Standards Section only after these final approvals have been obtained.

3. It shall be the responsibility of the ICF/DD to obtain any approvals from local authorities (such as zoning, building, fire, etc), that may be needed in the particular city or parish.

4. All ICF/DDs must be in conformity with the American National Standards Institute (ANSI) standards.

C. Facility Building Codes

1. These requirements shall not apply to facility construction documents approved for new construction, modification, renovation, alteration or repair of structures when:

a. approval of the construction document was acquired prior to promulgation of this rule; and

b. the actual start of construction commenced within 180 days of the construction document's approval and permitting date. The approval and permitting date shall be the date identified as the latest approval date either by the local/parish authorities or the Louisiana State Facility Planning and Control and the Office of State Fire Marshal.

2. All construction of new ICF/DD facilities, including new replacement facilities, and all construction of additions, alterations, reestablishments, refurbishments, and renovations to existing ICF/DD facilities shall comply with the following codes and standards:

a. the minimum standards as described in the Guidelines for Design and Construction of Health Care Facilities, Current Edition, published by the Facility Guidelines Institute (FGI) or any successor publication;

b. the latest editions of the Louisiana State Uniform Construction Codes currently adopted by the Louisiana Department of Public Safety, Louisiana State Uniform Construction Code Council (LSUCCC), LAC 55, Part VI, §301 as follows:

- i. International Building Code (IBC);
- ii. International Existing Building Code (IEBC);
- iii. International Residential Code (IRC);
- iv. International Mechanical Code (IMC);
- v. The Louisiana Plumbing Code [Part XIV (Plumbing) of the State Sanitary Code];
- vi. International Fuel Gas Code (IFGC);
- vii. National Electrical Code (NEC);
- viii. for all state owned licensed buildings the Louisiana Building Codes in RS 40:1722;

ix. The Advisory Base Flood Elevation (ABFE), published by FEMA; and

x. The National Fire Protection Association (NFPA) Life Safety Code NFPA 101 promulgated by the Louisiana Department of Public Safety and Corrections, Office of the State Fire Marshal.

3. As additional guidance for all construction of new ICF/DD facilities, including new replacement facilities, and all construction of additions, alterations, reestablishments, refurbishments, and renovations to existing ICF/DD facilities, the following design publications may be used, as necessary, to achieve the final product:

- a. the Design and Construction Guidance for Community Shelters, published by FEMA, number 361;
- b. the Design Guide for Improving Critical Facility Safety from Flooding and High Winds, published by FEMA, number 543;
- c. the ICC 500-2008: ICC/NSSA Standard for the Design and Construction of Storm Shelters, published by the International Code Council and National Storm Shelter Association, 2008 Edition; and
- d. the American Society for Testing and Materials (ASTM), E84.

4. All existing licensed facilities which have sustained damage from an act of God shall be evaluated for re-occupancy and shall have its condition evaluated by a Louisiana registered architect or civil engineer.

a. The owner shall provide a written evaluation report to the department on the condition of the structure, signed and sealed by a licensed Louisiana architect or civil engineer, prior to any reestablishment of occupancy. The evaluation shall be in accordance with the Louisiana State Uniform Construction Codes and acceptable engineering practices and standards. A plan of action to correct any problem shall also be submitted. The report and the plan of action shall be reviewed and accepted by the department prior to proceeding with any proposed modifications. Acceptance by the department will be on a case by case basis.

5. Waivers

a. The secretary of the department may, within his sole discretion, grant waivers to building and construction guidelines. The facility must submit a waiver request in writing to the Office of the State Fire Marshall and any other office/entity designated by the department to review and approve the facility's architectural plans. The facility must demonstrate how patient safety and the quality of care offered are not compromised by the waiver. The facility must demonstrate their ability to completely fulfill all other requirements of the service. The department shall make a written determination of the request. Waivers are not transferable in an ownership change and are subject to review or revocation upon any change in circumstances related to the waiver.

b. The secretary, in exercising his discretion, shall at a minimum, require the applicant to comply with the edition of the building and construction guidelines which immediately precede the most current edition of the Guidelines for Design and Construction of Health Care Facilities.

6. Any proposed new ICF/DD facility or any existing structure with 50 percent or greater substantial structural damage seeking to be licensed by DHH shall not be constructed or renovated in areas identified to be within the 140 mph or greater wind speed zones as established by the latest Louisiana Department of Public Works, Louisiana State Uniform Construction Code Council, Wind Speed by Parish Data. Links for wind speed data can be found on

websites of the LSUCCC or the Office of the State Fire Marshall (OSFM) and any other office/entity designated by the department to review and approve the facility's architectural plans.

7. No new facility or any existing structure with substantial structural damage shall be constructed or renovated in any coastal high hazard area (CHHA) that is subject to high velocity wave action from storms or seismic sources.

8. Any new construction or any replacement structure seeking to be licensed shall comply fully with this rule.

9. No structure shall be converted to ICF/DD use unless it complies with the standards and codes set forth herein including the building systems necessary for full compliance.

10. Separate buildings acquired or constructed for essential use by the facility and included under the ICF/DD facility license, whether on the premises or off, shall comply with the applicable portions of this rule. This requirement includes modular and prefabricated buildings.

11. Any temporary use of an existing building or structure for short term emergency purposes shall be reviewed and approved on a case by case basis for an approved limited time. The temporary use of these facilities shall be approved by the Louisiana Office of Public Health; Department of Public Safety, Office of the State Fire Marshal; and this department.

12. Work must be completed within a compliance time period not to exceed three years from date of acceptance. The department may grant an extension of time to a facility to achieve compliance. A written application requesting an extension must be submitted to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8611. Exterior Space

A. An ICF/DD shall ensure that all structures on the grounds of the facility accessible to individuals are maintained in good repair and are free from excessive hazard to health or safety.

B. An ICF/DD shall maintain the grounds of the facility in an acceptable manner and shall ensure that the grounds are free from any hazard to health or safety.

C. Garbage and rubbish which is stored outside shall be stored securely in non-combustible, covered containers and shall be removed on a regular basis. Trash collection receptacles shall be separate from the recreational area and be located as to avoid being a nuisance to neighbors.

D. Areas determined to be unsafe including, but not limited to, steep grades, cliffs, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced off. All fences shall be in good repair.

E. An ICF/DD shall have at least 75 square feet of accessible exterior recreational space for each client. The recreational space shall be enclosed with secure fencing. Recreational equipment shall be so located, installed and maintained as to ensure the safety of individuals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8613. Interior Space

A. Each living unit of an ICF/DD shall contain a space for the free and informal use of individuals. This space shall be constructed and equipped in a manner consonant with the programmatic goals of the ICF/DD. An appropriate variety of interior recreational spaces shall be provided. An ICF/DD shall ensure that there is evidence of routine maintenance and cleaning programs in all areas of the ICF/DD.

B. Dining Areas

1. An ICF/DD shall provide dining areas which permit individuals, staff and as appropriate, guests to eat together at a table, counter or in a manner which accommodates wheelchairs or other assisted devices. As a minimum, the dining area shall provide 15 square feet per person. If usage is by shifts the number of persons in each shift and the number of shifts shall be indicated in the functional program.

2. An ICF/DD shall provide dining areas which are clean, comfortable, home-like, well-lighted, ventilated and attractively furnished.

C. Sleeping Accommodations

1. An ICF/DD shall ensure that each single occupancy bedroom space has a floor area of at least 80-square feet and that each multiple occupancy bedroom space has a floor area of at least 60 square feet for each occupant.

2. An ICF/DD shall not use a room with a ceiling height of less than seven feet six inches as a bedroom space, unless, in a room with varying ceiling height, the portions of the room where the ceiling is at least seven feet six inches allow a usable space with floor areas as required above.

3. An ICF/DD shall not permit more than four individuals to occupy a designated bedroom space.

4. No individual over the age of 5 years shall occupy a bedroom with a member of the opposite sex, unless the persons occupying the bedroom are a married couple or properly documented medical reasons require it.

5. An ICF/DD shall not use any room which does not have an operable window as a bedroom space.

6. Each individual in the care of an ICF/DD shall have his/her own bed. A double bed may be provided for a married couple. An individual's bed shall be no shorter than the individual's height and no less than 30 inches wide and shall have a clean, comfortable, non-toxic, fire-retardant mattress. The bed shall be solidly constructed, include a mattress and box spring and be in good repair.

7. An ICF/DD shall ensure that sheets, pillow and blankets are provided for each individual.

8. Enuretic individuals shall have mattresses with moisture-resistant covers.

9. Sheets and pillow cases shall be changed at least weekly but shall be changed more frequently, if necessary.

10. Cots or other portable beds are not to be used.

11. An ICF/DD shall provide each individual in care with his/her own dresser or other adequate storage space for private use and a designated space for hanging clothing in proximity to the bedroom occupied by the individual.

12. Each individual in care of an ICF/DD shall have his/her own designated area for rest and sleep.

13. The decoration of sleeping areas for individuals shall allow for the personal tastes and expressions of the individuals.

D. Bathrooms

1. An ICF/DD shall have an adequate number of properly equipped bathroom facilities, accommodating individual care needs.

2. Bathrooms shall be so placed as to allow access without disturbing other individuals during sleeping hours.

3. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene.

4. Tubs and showers shall have slip-proof surfaces.

5. An ICF/DD shall provide toilets and baths or showers which allow for individual privacy.

6. An ICF/DD shall ensure that bathrooms have a safe and adequate supply of hot and cold running water. Hot water temperatures shall not exceed 110 degrees F. where individuals are not able to regulate temperature independently.

7. An ICF/DD shall ensure that bathrooms contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the individual's basic hygienic needs.

8. An ICF/DD shall ensure that bathrooms are equipped to facilitate maximum self-help by individuals. Bathrooms shall be large enough to permit staff assistance of individuals receiving services, as necessary.

9. Toilets, wash basins, and other plumbing or sanitary facilities in a facility shall, at all times, be maintained in good operating condition and shall be kept free of any materials that might clog or otherwise impair their operation.

E. Kitchens

1. Kitchens used for meal preparations shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals for all of the individuals and staff regularly served by such kitchen. All equipment shall be maintained in working order.

2. An ICF/DD shall not use disposable dinnerware at meals on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of individuals in care.

3. An ICF/DD shall ensure that all dishes, cups and glasses used by individuals in care are free from chips, cracks or other defects.

4. All reusable eating and drinking utensils shall be sanitized after a thorough washing and rinsing.

5. Animals shall not be permitted in food storage, preparation, and dining areas.

F. Staff Quarters

1. An ICF/DD utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff.

G. Administrative and Counseling Space

1. An ICF/DD shall provide a space which is distinct from individuals' living areas to serve as an administrative office for records, secretarial work and bookkeeping.

2. An ICF/DD shall have a designated space to allow private discussions and counseling sessions between individuals and staff.

H. Furnishings

1. An ICF/DD shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of individuals shall be appropriately designed to suit the size and capabilities of individuals.

2. An ICF/DD shall replace or repair broken, run-down or defective furnishings and equipment promptly.

I. Doors and Windows

1. An ICF/DD shall ensure that any designated bedroom shall have functional windows that can be opened.

2. An ICF/DD shall provide insect screens for all opened windows. This screening shall be readily removable in emergencies and shall be in good repair.

3. An ICF/DD shall ensure that all closets, bedrooms and bathrooms which have doors are provided with doors that can be readily opened from both sides.

4. Outside doors, windows and other features of the structure necessary for the safety and comfort of individuals shall be secured for safety within 24 hours of being found to be in a state of disrepair. Total repair shall be completed as soon as possible.

J. Storage

1. An ICF/DD shall ensure that there are sufficient and appropriate storage facilities.

2. An ICF/DD shall securely lock storage spaces containing all potentially harmful materials. Keys to such storage spaces shall only be available to authorized individuals.

K. Electrical Systems

1. An ICF/DD shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe condition.

2. An ICF/DD shall ensure that any room, corridor or stairway within an ICF/DD shall be sufficiently illuminated.

3. An ICF/DD shall provide adequate lighting of exterior areas to ensure the safety of individuals and staff during the night.

L. Temperature

1. An ICF/DD shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of individuals.

2. An ICF/DD shall maintain the spaces used by individuals at a temperature range of 71-81 degrees F.

3. An ICF/DD shall not use open flame heating equipment.

4. Water. Hot water temperatures shall not exceed 110 degrees F. where individuals are not able to regulate temperature independently.

M. Finishes and Surfaces

1. An ICF/DD shall not utilize any excessively rough surface or finish where this surface or finish may present a safety hazard to individuals.

2. An ICF/DD shall not have walls or ceilings surfaced with materials containing asbestos.

3. An ICF/DD shall not use lead paint for any purpose within the ICF/DD or on the exterior or grounds of the ICF/DD, nor shall the ICF/DD purchase any equipment, furnishings or decoration with lead paint. If an existing facility is to be converted to an ICF/DD, the facility shall be tested and certified to be free of asbestos or lead paint materials.

4. An ICF/DD which accepts individuals for placement who are under six years of age, mentally retarded or severely emotionally disturbed shall have evidence that the ICF/DD has been found to be free of lead paint hazards.

N. Laundry Space. An ICF/DD shall have a laundry space complete with washer(s) and dryer(s).

O. An ICF/DD shall have a minimum of 60 square feet of interior floor area for each client that is accessible to clients excluding hallways, closets, bathrooms, bedrooms, offices, staff quarters, laundry areas, storage areas and any other areas not accessible to or usable by clients for normal social and recreational activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

§8615. General Facility Safety Practices

A. An ICF/DD shall not maintain any firearm or chemical weapon in the living units of the facility.

B. An ICF/DD shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of individuals, staff and visitors.

C. An ICF/DD shall ensure that an appropriately equipped first-aid kit is available in the ICF/DD's buildings and in all vehicles used to transport individuals.

D. An ICF/DD shall ensure that porches, elevated walkways and elevated recreational areas within the facility meet ANSI standards.

E. Every required exit in an ICF/DD's buildings shall be continuously maintained free of all obstructions or impediments to immediate use in the case of fire or other emergency.

F. An ICF/DD shall prohibit the use of candles in sleeping areas of the individuals.

G. Power driven equipment used by an ICF/DD shall be kept in safe and good repair. Such equipment shall be used by individuals only under the direct supervision of a staff member and according to state law.

H. An ICF/DD shall have procedures to prevent insect and rodent infestation.

I. An ICF/DD shall allow individuals to swim only in areas determined to be safe and only under the supervision of a person with a current water safety instructor certificate or senior lifesaving certificate from the Red Cross or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:

Public Comments

Interested persons may submit written comments to Don Gregory, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, April 25, 2012 at 9:30 a.m. in Room 118,

Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Intermediate Care Facilities
for Persons with Developmental Disabilities
Minimum Licensing Standards**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$13,366 (SGF) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections since the licensing fees, in the same amounts, will continue to be collected.

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

This rule proposes to repeal the provisions governing the minimum licensing standards for intermediate care facilities I and II, community homes, and group homes and adopts provisions to incorporate these facilities under a single comprehensive Rule for intermediate care facilities for persons with developmental disabilities (ICFs/DD)(approximately 525 facilities). It is anticipated that implementation of this proposed rule will not have economic costs or benefits to ICFs/DD for FY 11-12, FY 12-13, and FY 13-14 since the required licensing fees have not changed.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Director
1203#068

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of Public Health**

**Public Health Immunization Requirements
(LAC 51:II.701)**

The Department of Health and Hospitals, Office of Public Health, in accordance with R.S. 91:348 and with the Administrative Procedure Act, R.S. 49:950 et seq., hereby amends LAC 51:II.701, Public Health Immunization Requirements. This text has been amended in response to updating current and newly developed vaccines to meet the school law immunization schedule and to standardize and

enforce immunization compliance reports utilizing the Louisiana Immunization Network for Kids Statewide (LINKS) registry by all schools operating within Louisiana.

Title 51

PUBLIC HEALTH—SANITARY CODE

Part II. The Control of Diseases

Chapter 7. Public Health Immunization

Requirements

§701. Immunization Schedule

[Formerly paragraph 2:025]

A. Appropriate immunizations for age for regulatory purposes shall be determined using the current immunization schedule from the Advisory Committee for Immunization Practice (ACIP) of the United States Public Health Service. Compliance will be based on the individual having received an appropriate number of immunizations for his/her age of the following types:

1. vaccines which contain tetanus and diphtheria toxoids, including DTP, DtaP, DT, Tdap, or Td or combinations which include these components;

2. polio vaccine, including OPV, eIPV, IPV, or combinations which include these components;

3. vaccines which contain measles antigen, including MMR and combinations which include these components;

4. vaccines which contain hepatitis antigen, including HepB, HepA, and combinations which include these components;

5. vaccines which contain varicella antigen, including varicella and combinations which include these components.

B. A one-month period will be allowed from the time the immunization is due until it is considered overdue. Medical, religious, and philosophic exemptions will be allowed for compliance with regulations concerning day care attendees and school enterers. Only medical and religious exemptions will be allowed for compliance with regulations concerning public assistance recipients. A copy of the current Office of Public Health immunization schedule can be obtained by writing to the Immunization Program, Office of Public Health, 1450 L and A Road, Metairie, LA 70001 or by telephone (504) 838-5300 or toll free (800) 251-2229.

C. [Formerly paragraph 2:025-1] Any child 18 years or under, admitted to any day care center or residential facility shall have verification that the child has had all appropriate immunizations for age of the child according to the Office of Public Health schedule unless presenting a written statement from a physician stating that the procedure is contraindicated for medical reasons, or a written dissent from parents. The operator of any day care center shall report to the state health officer through the health unit of the parish or municipality where such day care center is located any case or suspected case of reportable disease. Health records, including immunization records, shall be made available during normal operating hours for inspection when requested by the state health officer. When an outbreak of a communicable disease occurs in a day care center or residential facility, the operator of said day care center or residential facility shall comply with outbreak control procedures as directed by the state health officer.

D. [Formerly paragraph 2:025-2] On or before October 1 of each year, the operator of each day care center, nursery school, or residential facility enrolling or housing any child 18 years or under, including and not limited to these listed

facilities shall submit a preliminary immunization status report of all children enrolled or housed as of that date. This compliance report shall be submitted utilizing the Louisiana Immunization Network for Kids Statewide (LINKS) once the software module is completed for reporting and shall include identifying information for each child, and for each dose of vaccine received by the child since birth, Any child exempt from the immunization requirement shall also be identified, and the reason for exemption given on the report. After review of the report(s) by the state health officer or his or her designee, the day care center, nursery school, or residential facility operator will notify, on or before December 31 of each year, the parent or guardian of all enrolled or housed children, who are not compliant, with the immunization requirement of §701.A and C of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(2) and R.S. 40:5. Also see R.S. 17:170, R.S. 22:215.14, R.S. 40:31.15 and R.S. 44:17.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1221 (June 2002), amended LR 38:

Family Impact Statement

1. The effect on the stability of the family. This proposed Rule will not have any effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. This proposed Rule will not have any effects on the authority and rights of parents.

3. The effect on the functioning of the family. This proposed Rule will not have any effect on the functioning of the family.

4. The effect on the family earnings and family budget. The proposed Rule will have any effect on family earnings and budget.

5. The effect on the behavior and personal responsibility of children. The proposed Rule will not have any effect on the behavior and personal responsibility of children.

6. The ability of the family or local government to perform the function as contained in the proposed Rule. This proposed Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed rule.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Such comments should be submitted no later than Monday, April 9, 2012 at 4:30 p.m. to Ruben Tapia, Immunization Program Director, Office of Public Health, 1450 L and A Road, Metairie, LA 70001. Comments may be faxed to (504) 838-5206.

Public Hearing

A public hearing is scheduled for Friday, April 27, 2012 at 2:30 p.m. in conference room, Office of Public Health, 1450 L and A Road, Metairie, LA 70001. Please call (225) 342-7653 in advance to confirm the time and place of the public hearing, as the public hearing will be cancelled if the requisite number of comments is not received.

Bruce Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Public Health Immunization Requirements

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

The proposed rule amends Part II, Chapter 7, Section 701 of the Public Health Sanitary Code (Title 51). The proposed changes would clarify that licensed childcare facilities, such as day cares and nursery schools, will be required to report annually all immunization reports electronically through the existing web-based school module in the LINKS registry system. Also, three vaccines (TdaP, Hepatitis and Varicella antigens) are being codified and added to the Office of Public Health (OPH) immunization schedule based on current practice.

Schools (public/non-public, parochial, or independent) are already utilizing the LINKS system and will not incur any additional costs as a result of this rule change.

The proposed change will result in an estimated cost of \$320 to publish the notice of intent and the final rule in the Louisiana Register. This is a one-time cost that will be absorbed in the agency's existing budget. The estimated state savings from reduced mail-outs to childcare facilities as a result of moving to electronic reporting will be \$4,614 at minimum (\$2.49 per mailing x 1,853 facilities). In addition, there is an indeterminable amount of savings from reduced workload as a result of eliminated paper processing and eliminated secondary mail-outs from OPH for follow-up evaluations. The savings from follow-up evaluations cannot be determined because the number of mail-outs depends on the caliber of reporting done by each facility each year.

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

There will be no effect on revenue collections of state or local governmental units as a result of the proposed rule.

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

Childcare facilities will be able to save an indeterminable amount of mailing and printing costs as a result of transitioning to electronic reporting. If the childcare facility does not currently have the computer software and hardware to upload reports through LINKS, it will have to purchase the necessary equipment; however, enforcement of electronic reporting will be at the discretion of OPH. If OPH determines that a facility does not have the requisite hardware or its personnel is not trained in computers, OPH will allow for continued paper reporting.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment as a result of the proposed rule.

J.T. Lane
Assistant Secretary
1203#078

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Board of Private Investigator Examiners

Continuing Education (LAC 46:LVII.518)

Notice is hereby given that the Board of Private Investigator Examiners, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and relative to the authority granted to it to adopt, amend or repeal rules provided by R.S. 37:3505, and to prescribe and adopt regulations governing the manner and conditions under which credit shall be given by the board for participation in professional education, proposes to amend Chapter 5 of LAC 46:LVII.

The Board of Private Investigator Examiners proposes to amend LAC 46:LVII.518, Continuing Education, to change the eight hour continuing education annual requirement for licensees to a biennial requirement and to allow the board the authority to extend the time for a licensee to obtain investigative educational instruction or suspend the requirement for good cause shown. This is being done to address recent issues involving continuing education. The board is in the process of revamping its policies with regard to continuing education. The biennial requirement will allow licensees the time needed to be educated on the changes to continuing education. It also allows the board the flexibility to act in a natural disaster or other emergency. The changes to continuing education policy are being made for the purpose of improving the courses provided to licensees to maintain the highest standards of the private investigator industry in the state. The amendment proposed is consistent with the law and strictly part of the board's enforcement and regulation function as authorized by R.S. 37:3505.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LVII. Private Investigator Examiners

Chapter 5. Application, Licensing, Training, Registration and Fees

§518. Continuing Education

A. Each licensed private investigator is required to complete a minimum of eight hours of approved investigative educational instruction every two years in order to qualify for a license renewal. The deadline for completing the approved investigative educational instruction is as follows.

1. A licensed private investigator that completed a minimum of eight hours of approved investigative educational instruction in connection with a license renewal in the year 2011 shall complete a minimum of eight hours of approved investigative educational instruction prior to the license renewal date in the year 2013. Thereafter, a minimum of eight hours of approved investigative educational instruction must be completed biennially prior to the license renewal date in odd numbered years.

2. A licensed private investigator that is in good standing but that did not complete a minimum of eight hours of approved investigative educational instruction in connection with a license renewal in the year 2011 shall complete a minimum of eight hours of approved

investigative educational instruction prior to the license renewal date in the year 2012. Thereafter, a minimum of eight hours of approved investigative educational instruction must be completed biennially prior to the license renewal date in even numbered years.

3. A newly licensed private investigator that successfully completed a 40 hour training class shall complete a minimum of eight hours of approved investigative educational instruction prior to the licensee's second license renewal date. Thereafter, eight hours of approved investigative educational instruction must be completed biennially prior to the license renewal date.

B. Each licensed private investigator is required to complete and return the LSBPIE continuing education compliance form with the request for license renewal each year. The form shall be signed under penalty of perjury and shall include documentation of each hour of approved investigative education instruction completed and the date it was completed. The biennial continuing education requirement does not negate the necessity of a licensed private investigator to renew a license annually.

C. Any licensee who wishes to apply for an extension of time to complete investigative educational instruction requirements must submit a signed written request setting forth the reasons for the extension request to the executive director of the LSBPIE 30 days prior to the license renewal date. The training committee shall rule on each request. If an extension is granted, the investigator shall be granted 30 days or additional time as the training committee determines is needed to complete the required hours. Hours completed during an extension shall only apply to the previous investigative educational instruction requirement period.

D. The LSBPIE may suspend or waive an investigative educational instruction requirement for good cause shown.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505 (B)(1)(2).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 22:371 (May 1996), amended LR 27:564 (April 2001), LR 27:1016 (July 2001), LR 28:855 (April 2002), LR 38:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of person regarding the education and supervision of their children? The proposed Rule will not affect the authority or rights of persons regarding the education and supervision of their children

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a Board of Private Investigator Examiners enforcement function.

Public Comments

Interested persons may submit written data, views, comments or arguments to Pat Englade, Executive Director, Board of Private Investigator Examiners, 2051 Silverside Dr., Ste. 190, Baton Rouge, LA 70808. All comments must be submitted by 4:30 p.m., on April 10, 2012.

Pat Englade
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Continuing Education**

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

The proposed rule change will have no impact on state or local government expenditures. The proposed rule changes the continuing education requirement for private investigators to mandating 8 hours of credit every other year rather than annually as per current rule. The rule seeks to reduce oversight by the board for continuing education services in order to preclude the need to hire additional staff.

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

There will be no effect on revenue collections of state or local governmental units as a result of this proposed action.

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

The proposed changes to continuing education will provide an economic benefit to licensees who are required to pay for continuing education course credit, as they will only be required to pay for 8 hours of credit every other year versus every year. The economic benefits to directly affected persons or non-governmental groups are unknown, as the cost of continuing education courses vary. The Board does not anticipate the proposed changes will impact the cost charged for continuing education credits.

The proposed rule change will have some indeterminate impact on continuing education providers, as the demand for course credit will diminish by roughly half. As of September of 2011, there were approximately 107 continuing education providers approved to offer course credit in Louisiana. The cost of continuing education courses vary between providers and some, including the Board of Private Investigators Examiners, offer periodic training at no cost to investigators.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change should have no impact on competition and employment among investigators as all Louisiana private investigator licensees will be subject to the same continuing education requirement. There are currently 1,362 licensed private investigators in Louisiana. Of this number, 269 have held licenses for less than one year and will not require continuing education courses during the next 12 months.

The proposed rule change could have some indeterminate negative impact on employment among continuing education providers, as the demand for course credit will diminish by roughly half. There were 107 continuing education providers approved to offer course credit in Louisiana as of September 2011.

Pat Englade
Executive Director
1203#077

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of State Police
Transportation and Environmental Safety Section**

Motor Carrier Safety Revision Date and Weight
(LAC 33:V.10303 and 10305)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq, and R.S. 32:1501 et seq, gives notice of its intent to amend its rules regulating motor carrier safety and hazardous materials by updating the revision date of the adopted federal motor carrier regulations to February 1, 2012 and by clarifying the weight ratings of the vehicles to which these regulations apply.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Wastes and Hazardous Materials

Subpart 2. Department of Public Safety and Corrections—Hazardous Materials

Chapter 103. Motor Carrier Safety and Hazardous Materials

§10303. Federal Motor Carrier Safety and Hazardous Materials

A. The following federal motor carrier safety regulations and hazardous materials regulations promulgated by the United States Department of Transportation, revised as of February 1, 2012, and contained in the following Parts of 49 CFR as now in effect or as hereafter amended, are made a part of this Chapter.

Hazardous Material Regulations	
Part 107	Hazardous Materials Program Procedures
Part 171	General Information, Regulations, and Definitions
Part 172	Hazardous Materials Table, Special Provisions, and Hazardous Materials Communications, Emergency Response Information, and Training Requirements
Part 173	Shippers—General Requirements for Shipments and Packagings
Part 177	Carriage by Public Highways
Part 178	Specifications for Packagings
Part 180	Continuing Qualification and Maintenance of Packagings
Motor Carrier Safety Regulations	
Part 355	Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations
Part 360	Fees for Motor Carrier Registration and Insurance
Part 365	Rules Governing Applications for Operating Authority
Part 367	Standards for Registration with States
Part 373	Receipts and Bills
Part 374	Passenger Carrier Regulations
Part 375	Transportation of Household Goods in Interstate Commerce: Consumer Protection Regulations
Part 376	Lease and Interchange of Vehicles
Part 379	Preservation of Records
Part 382	Controlled Substances and Alcohol Use and Testing
Part 383	Commercial Driver's License Standards; Requirements and Penalties
Part 384	State Compliance with Commercial Driver's License Program
Part 385	Safety Fitness Procedures
Part 386	Rules of Practice for Motor Carrier, Broker, Freight Forwarder and Hazardous Materials Proceedings
Part 387	Minimum Levels of Financial Responsibility for Motor Carriers
Part 388	Cooperative Agreements with States
Part 389	Rulemaking Procedures-Federal Motor Carrier Safety
Part 390	Federal Motor Carrier Safety Regulations; General
Part 391	Qualifications of Drivers

Part 392	Driving of Commercial Motor Vehicles
Part 393	Parts and Accessories Necessary for Safe Operation
Part 395	Hours of Service of Drivers
Part 396	Inspection, Repair, and Maintenance
Part 397	Transportation of Hazardous Materials; Driving and Parking Rules

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 17:1115 (November 1991), LR 19:351 (March 1993), LR 20:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998), LR 29:711 (May 2003), LR 30:447 (March 2004), LR 32:641 (April 2006), LR 34:882 (May 2008), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 38:

§10305. Applicability of Regulations

A. - A.3. ...

B. For the purpose of this Chapter, the federal motor carrier safety regulations, as adopted or amended herein, shall also govern all carriers, drivers, persons or vehicles not subject to the federal regulations, if the operated vehicle has a single or combined gross vehicle weight or gross vehicle weight rating, greater than 26,000 pounds and is used in commerce or industry.

C. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 14:298 (May 1988), LR 17:1115 (November 1991), repromulgated LR 18:78 (January 1992), amended LR 18:746 (July 1992), LR 20:58 (January 1994), LR 36:2573 (November 2010), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 38:

Family Impact Statement

1. The effect of these rules on the stability of the family. These rules should not have any effect on the stability of the family.

2. The effect of these rules on the authority and rights of parents regarding the education and supervision of their children. These rules should not have any effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of these rules on the functioning of the family. These rules should not have any effect on the functioning of the family.

4. The effect of these rules on family earnings and family budget. These rules should not have any effect on family earnings and family budget.

5. The effect of these rules on the behavior and personal responsibility of children. These rules should not have any effect on the behavior and personal responsibility of children.

6. The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed rules. These rules should not have any effect on

the ability of the family or local government to perform the function as contained in the proposed rules.

Public Comments

Interested persons may submit written comments to Paul Schexnayder, P.O. Box 66614, Baton Rouge, La. 70896. Written comments will be accepted through April 15, 2012.

Jill Boudreaux
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Motor Carrier Safety
Revision Date and Weight**

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

The proposed rule change will have no impact on state or local government expenditures.

The proposed rule updates the revision date of adopted federal motor carrier regulations and clarifies the vehicles to which these regulations apply.

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

There should be no effect on revenue collections of state or local governmental units as a result of this rule change.

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

There should be no costs or economic benefits to any person or group as a result of this rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment.

Jill Boudreaux
Undersecretary
1203#044

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Transportation and Development
Professional Engineering and Land Surveying Board**

Supervising Professionals and Use of Seals
(LAC 46:LXI.2305 and 2701)

Under the authority of the Louisiana professional engineering and land surveying licensure law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Professional Engineering and Land Surveying Board has initiated procedures to amend its rules contained in LAC 46:LXI.2305 and 2701.

This is a technical revision of existing rules under which LAPELS operates. These changes clarify the role and responsibilities of supervising professionals of licensed firms and the sealing/signing of completed work by licensed firms.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LXI. Professional Engineers and Land Surveyors
Chapter 23. Firms

§2305. Supervising Professional

A.1. Each firm licensed with the board shall designate one or more supervising professionals. Each supervising professional shall be a licensed professional:

a. whose primary employment is with the firm on a full-time basis; or

b. whose secondary employment is with the firm, provided the supervising professional is an owner of the firm.

2. The supervising professionals of an engineering firm shall be professional engineers. The supervising professionals of a land surveying firm shall be professional land surveyors.

3. The responsibilities of a supervising professional include:

a. renewal of the firm's license and notification to the board of any change in the firm's supervising professionals;

b. institution and adherence of policies of the firm that are in accordance with the licensure law and the rules of the board; and

c. ensuring that all professional services provided by the firm are performed by or under the responsible charge of a licensed professional.

B. Nothing herein shall prohibit a supervising professional from also being in responsible charge of professional services provided by the firm.

C. A failure to comply with any of the provisions of this Chapter may subject both the licensed firm and the supervising professional to disciplinary action by the board.

D. Compliance with this Section will not be met by a contractual relationship between the firm and a licensed professional or a firm of licensed professionals in which such licensed professional or firm of licensed professionals is available on a consultative basis. Nor will it be considered compliance if a licensed professional is related to the firm solely in a nominal or inactive capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:689.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:115 (May 1979), amended LR 8:191 (April 1982), LR 10:343 (April 1984), LR 11:362 (April 1985), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1036 (July 2001), LR 30:1719 (August 2004), LR 33:2789 (December 2007), LR 35:2856 (December 2009), LR 38:

Chapter 27. Use of Seals

§2701. Seal and Signature

A. The following rules for the use of seals to identify work performed by a professional engineer or professional land surveyor shall be binding on every licensee.

1. - 3.b.iii.(c). ...

4. Seal Use

a. Completed Work

i. - ii. ...

iii. Drawings and Plats

(a). In the case of multiple sealings, the first sheet or title page shall be sealed, signed and dated by the licensee or licensees in responsible charge. In addition, each sheet shall be sealed, signed and dated by the licensee or licensees responsible for each sheet.

iv. Specifications, Reports, Design Calculations and Information

(a). In the case of specifications or reports of multiple pages, the first sheet or title page of each document shall be sealed, signed and dated by the licensee or licensees in responsible charge. Subsequent revisions shall be dated and initialed by the licensee in responsible charge whose seal, signature and date appears on the first sheet or title page.

4.b. - 5.b. ...

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:696.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 8:192 (April 1982), amended LR 12:692 (October 1986), LR 16:774 (September 1990), LR 17:273 (March 1991), LR 19:58 (January 1993), LR 22:287 (April 1996), LR 23:869 (July 1997), amended by the Louisiana Legislature, House Concurrent Resolution Number 2 of the 1998 First Extraordinary Session, LR 24:1207 (June 1998), repromulgated by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 25:1525 (August 1999), amended LR 27:1039 (July 2001), LR 30:1723 (August 2004), LR 33:2789 (December 2007), LR 34:2415 (November 2008), LR 35:1910 (September 2009), LR 38:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the *Louisiana Register*: The proposed Rule has no known impact on family formation, stability or autonomy.

Public Comments

Interested parties are invited to submit written comments on the proposed Rule through April 10, 2012 at 4:30 p.m., to Donna D. Sentell, Executive Director, Louisiana Professional Engineering and Land Surveying Board, 9643 Brookline Avenue, Suite 121, Baton Rouge, LA 70809-1433.

Donna D. Sentell
Executive Director

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

**RULE TITLE: Supervising
Professionals and Use of Seals**

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

There will be no costs or savings to state or local governmental units resulting from this rule change. The proposed rule makes technical changes necessary to clarify two sections. These changes clarify the role and responsibilities of supervising professionals of licensed firms and the sealing/signing of completed work by licensed firms.

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

There will be no effect on revenue collections of state or local governmental units as a result of this proposed action.

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

The proposed rule change will have no impact on costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no effect on competition and employment. The proposed rule change clarifies the role and responsibilities of supervising professionals of licensed firms. The proposed rule change also clarifies the requirements for licensed firms to seal/sign completed work. This proposed rule codifies the current application of the rules by the Board.

Donna Sentell
Executive Director
1203#042

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of the Treasury
Board of Trustees of the
Louisiana State Employees' Retirement System**

Internal Revenue Code Provisions (LAC 58:VII.Chapter 4)

In accordance with R.S. 49:950 et seq. of the Administrative Procedure Act, notice is hereby given that the Board of Trustees of the Louisiana School Employees' Retirement System has approved for advertisement the adoption of Chapter 4 of Part VII, included in Title 58, Retirement, of the Louisiana Administrative Code. This intended action complies with the statutory law administered by the Board of Trustees of the Louisiana School Employees' Retirement System. The proposed rules are being adopted pursuant to newly enacted R.S. 11:1165.1 (Acts 2011, No. 354), the effective date of *enactment* of which will be the formal adoption of these rules. Newly enacted R.S. 11:1165.1 provides that rules and regulations be adopted which will assure that the Louisiana School Employees' Retirement System will remain a tax-qualified retirement plan under the United States Internal Revenue Code and the Regulations thereunder. A preamble to this proposed action has not been prepared.

**Title 58
RETIREMENT**

Part VII. Louisiana School Employees Retirement System

Chapter 4. Internal Revenue Code Provisions

§401. Limitation on Benefits

A. The limitations of this Chapter shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

B. The annual benefit otherwise payable to a member under the plan at any time shall not exceed the maximum permissible benefit. If the benefit the member would otherwise accrue in a limitation year would produce an annual benefit in excess of the maximum permissible benefit, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the maximum permissible benefit.

C. If the member is, or has ever been, a Member in another qualified defined benefit plan (without regard to

whether the plan has been terminated) maintained by the employer or a predecessor employer, the sum of the member's annual benefits from all such plans may not exceed the maximum permissible benefit.

D. The application of the provisions of this chapter shall not cause the maximum permissible benefit for any member to be less than the member's accrued benefit under all the defined benefit plans of the employer or a predecessor employer as of the end of the last limitation year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Section 415 of the Internal Revenue Code in effect as of the end of the last limitation year beginning before July 1, 2007, as described in Section 1.415(a)-1(g)(4) of the Income Tax Regulations.

E. The limitations of this chapter shall be determined and applied taking into account the rules in Section G.

F. Definitions

Annual Benefit—a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this article. For a member who has or will have distributions commencing at more than one annuity starting date, the annual benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this chapter as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Section 1.401(a)-20, Q and A 10(d), and with regard to Section 1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

a. No actuarial adjustment to the benefit shall be made for:

i. survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form;

ii. benefits that are not directly related to retirement benefits (such as a disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or

iii. the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Section 417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this chapter, and the plan provides that the amount payable under the form of benefit in any limitation year shall not exceed the limits of this chapter applicable at the annuity starting date, as increased in subsequent years pursuant to Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form. The determination of the annual

benefit shall take into account social security supplements described in Section 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, but shall disregard benefits attributable to employee contributions or rollover contributions. Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with §§401.F.1.a. or 401.F.1.b.

b. Benefit Forms Not Subject to Section 417(e)(3).

i. The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this Subparagraph F.1.a, if the form of the member's benefit is either:

(a) a non-decreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse); or

(b) an annuity that decreases during the life of the member merely because of:

(i) the death of the survivor annuitant (but only if the reduction is not below 50 percent of the benefit payable before the death of the survivor annuitant); or

(ii) the cessation or reduction of Social Security supplements or qualified disability payments [as defined in Section 401(a)(11)].

ii. Limitation years beginning before July 1, 2007. For limitation years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount:

(a) the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form; and

(b) a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date.

iii. Limitation Years beginning on or after July 1, 2007. For limitation years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of:

(a) the annual amount of the straight life annuity (if any) payable to the member under the plan commencing at the same annuity starting date as the member's form of benefit; and

(b) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date.

c. Benefit Forms Subject to Section 417(e)(3). The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this paragraph if the form of the member's benefit is other than a benefit form described in §401.F.1.a. In this case, the

actuarially equivalent straight life annuity shall be determined as follows:

i. Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of:

(a) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit computed using the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form;

(b) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in R.S. 11:1171; and

(c) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate defined in R.S. 11:1171 and the applicable mortality table defined, divided by 1.05.

ii. Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the member's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greater annual amount:

(a) the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form; and

(b) a 5.5 percent interest rate assumption and the applicable mortality table. If the annuity starting date of the member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this §401.F.1.b. shall not cause the amount payable under the member's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this chapter, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greatest annual amount:

(i) the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171 for adjusting benefits in the same form;

(ii) the applicable interest rate defined in R.S. 11:1171 and the applicable mortality table; and

(iii) the applicable interest rate defined in R.S. 11:1171 (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the plan then adopted and in effect) and the applicable mortality table.

Applicable Mortality Table—the applicable mortality table within the meaning of Section 417(e)(3)(B) of the Internal Revenue Code.

415 Safe-Harbor Compensation—

a. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Section 1.62-2(c) of the Income Tax Regulations), and excluding the following:

i. Employer contributions [other than elective contributions described in Section 402(e)(3), Section 408(k)(6), Section 408(p)(2)(A)(i), or Section 457(b)] to a plan of deferred compensation (including a simplified employee pension described in Section 408(k) or a simple retirement account described in Section 408(p), and whether or not qualified) to the extent such contributions are not includible in the member's gross income for the taxable year in which contributed, and any distributions (whether or not includible in gross income when distributed) from a plan of deferred compensation (whether or not qualified);

ii. Amounts realized from the exercise of a nonstatutory stock option (that is, an option other than a statutory stock option as defined in Section 1.421-1(b) of the Income Tax Regulations), or when restricted stock (or property) held by the member either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

iii. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;

iv. Other amounts that receive special tax benefits, such as premiums for group-term life insurance (but only to the extent that the premiums are not includible in the gross income of the member and are not salary reduction amounts that are described in Section 125);

v. Other items of remuneration that are similar to any of the items listed in Clauses i through iv above.

b. For any self-employed individual, compensation shall mean earned income.

c. Except as provided herein, for limitation years beginning after December 31, 1991, compensation for a limitation year is the compensation actually paid or made available during such limitation year.

d. For limitation years beginning on or after July 1, 2007, compensation for a limitation year shall also include compensation paid by the later of 2 1/2 months after a member's severance from employment with the employer maintaining the plan or the end of the limitation year that includes the date of the member's severance from employment with the employer maintaining the plan, if:

i. the payment is regular compensation for services during the member's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential),

commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the member while the member continued in employment with the employer;

ii. the payment is for unused accrued bona fide sick, vacation or other leave that the member would have been able to use if employment had continued; or

iii. the payment is received by the member pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.

e. Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 1/2 months after the date of severance from employment or the end of the limitation year that includes the date of severance from employment. Back pay, within the meaning of Section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.

f. For limitation years beginning after December 31, 1997, compensation paid or made available during such limitation year shall include amounts that would otherwise be included in compensation but for an election under Sections 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b).

g. For limitation years beginning after December 31, 2000, compensation shall also include any elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4).

Defined Benefit Compensation Limitation—100 percent of a member's high three-year average compensation, payable in the form of a straight life annuity. In the case of a member who is rehired after a severance from employment, the defined benefit compensation limitation is the greater of 100 percent of the member's high three-year average compensation, as determined prior to the severance from employment or 100 percent of the member's high three-year average compensation, as determined after the severance from employment under §401.G.

Defined Benefit Dollar Limitation—effective for limitation years ending after December 31, 2001, the defined benefit dollar limitation is \$160,000, automatically adjusted under Section 415(d) of the Internal Revenue Code, effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within the calendar year of the date of the adjustment, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

Employer—for purposes of this chapter, employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations, as defined in Section 414(b) of the Internal Revenue Code, as modified by Section 415(h), all commonly controlled trades or businesses [as defined in Section 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Section 415(h)], or affiliated service groups [as defined in Section 414(m)] of which the adopting employer is a part, and any other entity required to be aggregated with

the employer pursuant to Section 414(o) of the Internal Revenue Code.

Formerly Affiliated Plan of the Employer—a plan that, immediately prior to the cessation of affiliation, was actually maintained by the employer and, immediately after the cessation of affiliation is not actually maintained by the employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the employer, such as the sale of a member controlled group of corporations, as defined in Section 414(b) of the Internal Revenue Code, as modified by Section 415(h), to an unrelated corporation, or that causes a plan to not actually be maintained by the employer, such as transfer of plan sponsorship outside a controlled group.

High Three-Year Average Compensation—the average compensation for the three consecutive years of service (or, if the member has less than three consecutive years of service, the member's longest consecutive period of service, including fractions of years, but not less than one year) with the employer that produces the highest average. A year of service with the employer is the 12 consecutive month period defined in R.S. 11:1131. In the case of a member who is rehired by the employer after a severance from employment, the member's high three-year average compensation shall be calculated by excluding all years for which the member performs no services for and receives no compensation from the employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A member's compensation for a year of service shall not include compensation in excess of the limitation under Section 401(a)(17) of the Internal Revenue Code that is in effect for the calendar year in which such year of service begins.

Limitation Year—a fiscal year, from July 1 to June 31. All qualified plans maintained by the employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

Maximum Permissible Benefit—the lesser of the defined benefit dollar limitation or the defined benefit compensation limitation (both adjusted where required, as provided below).

a. Adjustment for Less than 10 Years of Participation or Service. If the member has less than 10 years of participation in the plan, the defined benefit dollar limitation shall be multiplied by a fraction:

i. the numerator of which is the number of years (or part thereof, but not less than one year) of participation in the plan; and

ii. the denominator of which is 10. In the case of a Member who has less than 10 years of service with the employer, the defined benefit compensation limitation shall be multiplied by a fraction:

(a). the numerator of which is the number of years (or part thereof, but not less than one year) of Service with the employer; and

(b). the denominator of which is 10.

b. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62 or after Age 65. Effective for benefits commencing in limitation years ending after December 31, 2001, the defined benefit dollar

limitation shall be adjusted if the annuity starting date of the member's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the defined benefit dollar limitation shall be adjusted under Clause b.i of this Paragraph, as modified by Clause b.iii of this Paragraph. If the annuity starting date is after age 65, the defined benefit dollar limitation shall be adjusted under Clause b.ii of this Paragraph, as modified by Clause b.iii of this Paragraph.

i. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement before Age 62

(a). Limitation Years Beginning before July 1, 2007. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under §401.F.10.a. for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171; or

(ii). a 5 percent interest rate assumption and the applicable mortality table as defined in R.S. 11:1171.

(b). Limitation Years Beginning on or After July 1, 2007

(i). Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for the annuity starting date as defined in R.S. 11:1171 (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii). Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is prior to age 62 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the defined benefit dollar limitation for the member's annuity starting date is the lesser of the limitation determined under Division a.ii.(b).(i) of this Paragraph and the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan

at the member's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this article.

ii. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement after Age 65

(a). Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning before July 1, 2007, the defined benefit dollar limitation for the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount:

(i). the interest rate specified in R.S. 11:1171 and the mortality table (or other tabular factor) specified in R.S. 11:1171; or

(ii). a 5-percent interest rate assumption and the applicable mortality table as defined in R.S. 11:1171.

(b). Limitation Years Beginning Before July 1, 2007

(i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's annuity starting date that is the actuarial equivalent of the defined benefit dollar limitation (adjusted under Subparagraph a of this Paragraph for years of participation less than 10, if required), with actuarial equivalence computed using a 5 percent interest rate assumption and the applicable mortality table for that annuity starting date as defined in R.S. 11:1171 (and expressing the member's age based on completed calendar months as of the annuity starting date).

(ii) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the member's benefit is after age 65 and occurs in a limitation year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the defined benefit dollar limitation at the member's annuity starting date is the lesser of the limitation determined under §401.F.10.b.ii.(b).(i). and the defined benefit dollar limitation (adjusted under §401.F.10.a. for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the member's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this article. For this purpose, the adjusted

immediately commencing straight life annuity under the plan at the member's annuity starting date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

iii. Notwithstanding the other requirements of this Subparagraph F.10.b., no adjustment shall be made to the defined benefit dollar limitation to reflect the probability of a member's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the member prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the plan does not charge members for providing a qualified preretirement survivor annuity, as defined in Section 417(c) of the Internal Revenue Code, upon the member's death.

c. Minimum Benefit Permitted. Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a member under this plan shall be deemed not to exceed the maximum permissible benefit if:

i. the retirement benefits payable for a limitation year under any form of benefit with respect to such member under this plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the employer do not exceed \$10,000 multiplied by a fraction:

(a). the numerator of which is the member's number of years (or part thereof, but not less than one year) of service (not to exceed 10) with the employer; and

(b). the denominator of which is 10; and

ii. the employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Section 401(h), and accounts for postretirement medical benefits established under Section 419A(d)(1) are not considered a separate defined contribution plan).

Predecessor Employer—if the employer maintains a plan that provides a benefit which the member accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the member in the plan. A former entity that antedates the employer is also a predecessor employer with respect to a member if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

Severance from Employment—an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee's

new employer maintains the plan with respect to the employee.

Year of Participation—the member shall be credited with a year of participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met:

a. the member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period; and

b. the member is included as a member under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the member shall equal the amount of benefit accrual service credited to the member for such accrual computation period. A member who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the Internal Revenue Code for an accrual computation period shall receive a year of participation with respect to that period. In addition, for a member to receive a year of participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

Year of Service—for purposes of Section 401.G., the member shall be credited with a year of service (computed to fractional parts of a year) for each accrual computation period for which the member is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, taking into account only service with the employer or a predecessor employer.

G. Other Rules

1. **Benefits under Terminated Plans.** If a defined benefit plan maintained by the employer has terminated with sufficient assets for the payment of benefit liabilities of all plan members and a member in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the member's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this article. If there are not sufficient assets for the payment of all Members' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the Member under the terminated plan.

2. **Benefits Transferred from the Plan.** If a Member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan that is not maintained by the employer and the transfer is not a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and

A-3(c), of the Income Tax Regulations, the transferred benefits are treated by the employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the employer that terminated immediately prior to the transfer with sufficient assets to pay all members' benefit liabilities under the plan. If a member's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant Section 1.411(d)-4, Q and A-3(c), of the Income Tax Regulations, the amount transferred is treated as a benefit paid from the transferor plan.

3. **Formerly Affiliated Plans of the Employer.** A formerly affiliated plan of an employer shall be treated as a plan maintained by the employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay members' benefit liabilities under the plan and had purchased annuities to provide benefits.

4. **Plans of a Predecessor Employer.** If the employer maintains a defined benefit plan that provides benefits accrued by a member while performing services for a predecessor employer, the member's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay members' benefit liabilities under the plan, and had purchased annuities to provide benefits; the employer and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor employer.

5. **Special Rules.** The limitations of this chapter shall be determined and applied taking into account the rules in Section 1.415(f)-1(d), (e) and (h) of the Income Tax Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1165.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees' Retirement System, LR 38:

§403. Required Minimum Distributions

A.1. Unless the member has elected otherwise on or before December 31, 1983, the entire benefit of a member shall be distributed over a period not longer than the longest of the following periods:

- a. the member's life;
- b. if the member is married, the life of the member's designated beneficiary;
- c. the member's life expectancy;
- d. the joint life and last survivor life expectancy of the member and his designated beneficiary.

2. If the member is married and his spouse survives him, the designated beneficiary for at least a qualified joint and survivor annuity and 50 percent of his deferred retirement option plan account shall be his spouse, unless such spouse has consented to the contrary in writing before a notary public. For purposes of this Paragraph, *spouse* shall mean that person who is married to the member under a

legal regime of community of acquets and gains on his effective date of retirement or effective date of participation in the deferred retirement option plan, whichever is earlier.

3. If the member was a member on or before December 31, 1983, he shall be deemed to have made the election referred to herein. If a member dies after the commencement of his benefits, the remaining portion of his benefit shall be distributed at least as rapidly as before his death. Payment of survivor benefits shall not be considered to violate this provision.

B.1. If the member dies before his benefit has commenced the remainder of such interest shall be distributed to the member's beneficiary within five years after the date of such member's death.

2. Paragraph 1 of this Subsection shall not apply to any portion of a member's benefit which is payable to or for the benefit of a designated beneficiary or beneficiaries, over the life of or over the life expectancy of such beneficiary, so long as such distributions begin not later than one year after the date of the member's death, or, in the case of the member's surviving spouse, the date the member would have attained the age of 70 years and six months. If the designated beneficiary is a child of the member, for purposes of satisfying the requirement of Paragraph 1 of this Subsection, any amount paid to such child shall be treated as if paid to the member's surviving spouse if such amount would become payable to such surviving spouse, if alive, upon the child's reaching age eighteen or, if later, upon the child's completing a designated event. For purposes of the preceding sentence, a designated event shall be the later of the date the child is no longer disabled, or the date the child ceases to be a full-time student or attains age 23, if earlier.

3. Paragraph 1 of this Subsection shall not apply if the distribution of the member's interest has commenced and is for a term certain over a period permitted in Subsection A of this Section.

4. Paragraph 1 of this Subsection shall not apply if the member has elected otherwise on or before December 31, 1983, or such later date to which such election period shall be subject under Internal Revenue Code Section 401(a).

C. As to any benefit payable by the retirement system which is not optional as of December 31, 1983, the member shall be considered to have made the election referred to in Subsections A and B of this Section, if he was a member on or before such time.

D. If by operation of law or by action of the board of trustees, a survivor benefit is payable to a specified person or persons, the member shall be considered to have designated such person as an alternate beneficiary hereunder. If there is more than one such person, then the youngest disabled child shall be considered to have been so designated, or, if none, then the youngest person entitled to receive a survivor benefit shall be considered to have been so designated. The designation of a designated beneficiary hereunder shall not prevent payment to multiple beneficiaries but shall only establish the permitted period of payments.

E. Payment in accordance with the survivor benefit provisions of R.S. 11:1151 shall be deemed not to violate Subsections A and B of this Section.

F. This Section shall be effective for members of the system who complete any service under the system on or

after July 1, 1992, with employers contributing to the system.

G. Distributions from the system shall be made in accordance with the requirements set forth in Internal Revenue Code Section 401(a)(9), including the minimum distribution incidental benefit rules applicable thereunder.

H.1. A member's benefits shall commence to be paid on or before the required beginning date.

2. The required beginning date shall be April 1 of the calendar year following the later of the calendar year in which the member attains 70 1/2 years of age, or the calendar year in which the employee retires. Effective for plan years beginning on or after January 1, 1998, the required beginning date shall be April 1 of the year following the later of the year the member attained 70 1/2 or the year he terminated employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:

§405. Direct Rollovers

A. Notwithstanding any other provision of law to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the board of trustees, to have any portion of an "eligible rollover distribution", as specified by the distributee, paid directly to an "eligible retirement plan", as those terms are defined below.

B. The following definitions shall apply.

Eligible Rollover Distribution—any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

a. any distribution that is one of a series of Outlook:\\Archive Folders\\Rule Submission substantially equal periodic payments, not less frequently than annually, made for the life or life expectancy of the member, or the joint lives or joint life expectancies of the member and the member's designated beneficiary, or for a specified period of ten years or more;

b. any distribution to the extent that such distribution is required under Section 401(a)(9) of the United States Internal Revenue Code; and

c. any distribution which is made upon hardship of the employee.

Eligible Retirement Plan—any of the following:

a. an individual retirement account described in Section 408(a) of the Internal Revenue Code;

b. an individual retirement annuity described in Section 408(b) of the Internal Revenue Code;

c. an annuity plan described in Section 403(a) of the Internal Revenue Code;

d. a qualified trust as described in Section 401(a) of the Internal Revenue Code, provided that such trust accepts the member's eligible rollover distribution;

e. an eligible deferred compensation plan described in Section 457(b) of the Internal Revenue Code that is maintained by an eligible governmental employer, provided the plan contains provisions to account separately for amounts transferred into such plan; and

f. an annuity contract described in Section 403(b) of the Internal Revenue Code.

Distributee—shall include:

- a. a member or former member;
- b. the member's or former member's surviving spouse, or the member's or former member's former spouse with whom a benefit or a return of employee contributions is to be divided pursuant to R.S. 11:291(B), with reference to an interest of the member or former spouse;
- c. the member's or former member's non-spouse beneficiary, provided the specified distribution is to an eligible retirement plan as defined in Subparagraphs a and b of the definition of *eligible retirement plan* in this Section.

Direct Rollover—a payment by the system to the eligible retirement plan specified by the distributee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:

§407. Annual Compensation Limitation

A. Unless otherwise provided in this Chapter, the accrued benefit of each “Section 401(a)(17) employee” as that term is defined below shall be the greater of the following:

1. The employee's accrued benefit determined with respect to the benefit formula applicable for the plan year beginning on or after January 1, 1996, as applied to the employee's total years of service taken into account for purposes of benefit accruals.

2. The sum of:

a. the employee's accrued benefit as of the last day of the last plan year beginning before January 1, 1996, frozen in accordance with the provisions of Section 1.401(a)(4)-1 through 1.401(a)(4)-13 of the Code of Federal Regulations;

b. the employee's accrued benefit determined under the benefit formula applicable for the plan year beginning on or after January 1, 1996, as applied to the employee's years of service credited to the employee for plan years beginning on or after January 1, 1996, for purposes of benefit accruals.

B. A *Section 401(a)(17) employee* shall mean any employee whose current accrued benefit, as of a date on or after the first day of the first plan year beginning on or after January 1, 1996, is based on compensation for a year beginning prior to the first day of the first plan year beginning on or after January 1, 1996, that exceeded \$150,000.

C. If an employee is not a “Section 401(a)(17) employee”, his accrued benefit in this system shall not be based upon compensation in excess of the annual limit of Section 401(a)(17) of the United States Internal Revenue Code as amended and revised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1302.1.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the Louisiana School Employees Retirement System, LR 38:

Family Impact Statement

The proposed adoption of LAC 58:VII.401, regarding Internal Revenue Code provisions applicable to the Louisiana School Employees’ Retirement System, should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children; or
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Any interested person may submit written comments regarding this proposed Rule to Carolyn Forbes, Assistant Director, Louisiana School Employees’ Retirement System by mail to 8660 United Plaza Blvd., Baton Rouge, LA 70809. All comments must be received no later than 4:30 p.m., February 10, 2012.

Charles P. Bujol
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Internal Revenue Code Provisions

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

There will be no net estimated implementation costs or savings to state or local governmental units. R.S. 11:1165.1 requires that provisions relating to the tax-qualification status of the Louisiana School Employees’ Retirement System be contained in rules and regulations.

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

There will be no estimated effect on revenue collections of state or local governmental units.

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

There will be no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no estimated effect on competition or employment.

Charles P. Bujoi
Executive Director
1203#039

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI
Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 3 claims in the amount of \$6,570.96 were received for payment during the period February 1, 2012-February 29, 2012

There were 3 paid and 0 denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2911.599	9026.998	Terrebonne
2911.898	9026.368	Terrebonne
2943.360	8929.210	St. Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-9388.

Scott A. Angelle
Secretary

1203#038

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