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This public document was published at a total cost of \$5,424. Five hundred copies of this public document were published in this monthly printing at a cost of \$5,424. The total cost of all printings of this document including reprints is \$5,424. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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Executive Orders

EXECUTIVE ORDER BJ 09-17

Flags at Half-Staff

WHEREAS, the Honorable David C. Treen, who served as Governor of the State of Louisiana from 1980 to 1984, died today, Thursday, October 29, 2009, at the age of 81;

WHEREAS, Governor Treen was a visionary leader, a tireless advocate, and a true statesman with a servant's heart who contributed decades of service to the State of Louisiana; and

WHEREAS, Through Governor Treen's service to the State of Louisiana, he worked to better the lives of her citizens as both a state and federal official;

NOW THEREFORE I, BOBBY JINDAL, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect of the citizens of the State of Louisiana for Governor David C. Treen, the flags of the United States and the State of

Louisiana shall be flown at half staff over the State Capitol and all public buildings and institutions of the State of Louisiana until sunset on Thursday, November 5, 2009.

SECTION 2: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 29th day of October, 2009.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Jay Dardenne
Secretary of State
0911#109

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Agricultural Finance Authority

Farm and Agribusiness Recovery and Loan
(LAC 7:III.101, and 701-715)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and under the authority of R.S. 3:266, the Louisiana Agricultural Finance Authority declares an emergency to exist and adopts by emergency process these regulations for the Louisiana Farm and Agribusiness Recovery and Loan Program.

Louisiana's agricultural and timber industries are a vital part of Louisiana's overall economy and are worth approximately \$9.5 billion to Louisiana's economy every year.

In 2008, Hurricanes Gustav and Ike did approximately \$1 billion of damage to the agricultural and timber industries of this State. Much of the damage resulted from the destruction of crops, livestock, timber, and other agricultural products. Because of these losses, a substantial number of agricultural producers and agribusinesses were left without sufficient income to pay off crop and other agricultural loans or to obtain financing for the 2009 crop year. The financial crisis in 2008 and 2009 and the reluctance of financial institutions to provide loans have exacerbated the severe shortage of capital and credit available for investment in agriculture.

Money for loans and grants to agricultural producers and agribusinesses suffering losses as a result of Hurricanes Gustav and Ike has become available and must be distributed as soon as possible. Delaying the distribution of this money until permanent rules and regulations can be promulgated will cause the money to be unavailable for the 2009 crop year. Failure to utilize this money quickly will disrupt the livelihood of agricultural producers, agribusinesses and the related businesses that depend on them. Failure to timely utilize the money will substantially eliminate or reduce the amount of crops, livestock, and other agricultural products, planted, produced, harvested or processed in 2009; thereby further increasing the losses to agricultural producers, agribusiness, and the economy of this state.

The losses caused by the two hurricanes, the effect these losses have on the ability of agricultural producers and agribusinesses to obtain financing, the severe shortage of capital and credit available for investment in agriculture, and the potential loss of more of this State's agricultural producers, agribusinesses, and agricultural revenues 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 is a renewal of the original Emergency Rule signed on July 7, 2009 and become effective upon the signature of the commissioner and shall remain in effect for 120 days, unless renewed or until the permanent Rule is effective.

Title 7

AGRICULTURE AND ANIMALS

Part III. Agricultural Finance

Chapter 1. General Provisions

§101. Definitions

A. The words and terms defined in R.S. 3:263 are applicable to this Part.

B. The following words and terms are defined for the purposes of this Chapter.

Agribusiness—a person, other than an agricultural producer, who engages in agriculture or provide support activities, products, or services to an agricultural producer and such products or services are directly related to the production and harvesting of crops and livestock.

Agricultural—the adjective form of *agriculture* as defined in R.S. 3:263(2).

Agricultural Producer—a person engaged in agriculture for the planting, growing, harvesting, or production of an agricultural product in its natural state and who primarily assumes the production and market risks associated with such activities.

Agricultural Product—any agronomic, aquacultural, floricultural, horticultural, maricultural, silvicultural, or viticultural crop, livestock, or product.

* * *

Farm—the total of all areas of land, water, or both in Louisiana, used by an agricultural producer to produce or harvest one or more agricultural products, regardless of whether the area or areas are located in more than one parish.

* * *

Livestock—any animal except dogs and cats, bred, kept, maintained, raised, or used for profit, that is used in agriculture, aquaculture, agritourism, competition, recreation, or Silviculture, or for other related purposes or used in the production of crops, animals, or plant or animal products for market. This definition includes but is not limited to cattle, buffalo, bison, oxen, and other bovine; horses, mules, donkeys, and other equine; goats; sheep; swine; chickens, turkeys, and other poultry; domestic rabbits; imported exotic deer and antelope, elk, farm-raised white-tailed deer, farm-raised ratites, and other farm-raised exotic animals; fish, turtles, and other animals identified with aquaculture which are located in artificial reservoirs or enclosures that are both on privately owned property and constructed so as to prevent, at all times, the ingress and egress of fish life from public waters; any commercial crawfish from any crawfish pond; and any hybrid, mixture, or mutation of any such animal.

* * *

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 10:866 (November 1984); amended LR 36:

Chapter 7. Louisiana Farm and Agribusiness Recovery and Loan Program

§701. Louisiana Farm and Agribusiness Recovery and Loan Program; Establishment of; Purpose; Limitations; Terms

A. The Louisiana Farm and Agribusiness Recovery and Loan Program is established.

B. The Louisiana Farm and Agribusiness Recovery and Loan Program provides loans, grants, or a combination thereof to agricultural producers or agribusinesses for the purpose of aiding in the recovery from the 2008 hurricanes, Gustav and Ike, and to subsequently provide Louisiana agricultural producers and agribusinesses additional financial resources for recovery from any future disasters and for the maintenance and growth of agriculture in Louisiana.

C. The limits on loans and grants from the Louisiana Farm and Agribusiness Recovery and Loan Program are as follows:

1. Agricultural producers may receive from \$10,000 up to a maximum of \$100,000. The amount provided shall be a combination of an 80% loan and 20% grant.

2. Agribusinesses may receive from \$10,000 up to a maximum of \$250,000 in the form of a direct loan.

D. The general terms under which disbursements will be made are as follows:

1. Interest at the rate of 1 1/2 % interest per annum will be charged on the unpaid balance of all loans made under this program.

2. The maximum term of any loan shall be 10 years.

3. Any grant given in combination with a loan shall be subject to being repaid if the loan plus interest is not paid in full or if the loan goes into default.

4. Normal and customary terms of loans regarding notices, defaults, late fees, attorney fees, and other matters customarily spelled out in a promissory note or other negotiable instrument. Such terms, as authorized by LAFA, shall be in the negotiable instrument approved by LAFA.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 36:

§703. Eligibility of Applicant

A. An agricultural producer experiencing a 2008 storm related loss shall be eligible to receive money from the Louisiana Farm and Agribusiness Recovery and Loan Program upon meeting the following requirements:

1. the farm upon which a loss occurred must be located in Louisiana;

2. active agricultural operations must have been ongoing before the 2008 storms occurred and continue to be ongoing thereafter;

3. a minimum annual gross revenue of \$25,000 from the agricultural operations must have been received in 2007 or in 2008 prior to the storms;

4. suffered a minimum storm related loss of \$10,000;

5. employed one or more person (including owner) full time during the previous year.

B. An agribusiness experiencing a 2008 storm related loss shall be eligible to receive money from the Louisiana Farm and Agribusiness Recovery and Loan Program upon meeting the following requirements.

1. The agribusiness must be physically located in Louisiana.

2. Active agribusiness operations must have been ongoing before the 2008 storms occurred and continue to be ongoing from the time active agribusiness operations could resume after the storms up to the date of application.

3. A minimum annual gross revenue of \$25,000 from the agribusiness operations must have been received in 2007 or in 2008 prior to the storms.

4. Employed at least two full time employees (including owner) in 2008, prior to the storms and support at least two other indirect jobs in this state.

5. Experienced a 20 percent decline in gross agribusiness revenue for the period of time in 2008 after the storms occurred as compared to gross agribusiness revenue for the same time period in 2007 or experienced a combined tangible property loss and revenue loss of \$10,000 or more.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 36:

§705. Application Procedure and Forms

A. The application period shall be publicly announced or published in a manner that fairly puts agricultural producers and agribusinesses on notice of the Louisiana Farm and Agribusiness Recovery and Loan Program and the start and end of the application period.

B. Only application forms prepared by LAFA for this purpose may be used.

C. Every applicant for a loan or grant shall submit the following documents to LAFA.

1. The Completed Application Form Signed by the Agricultural Producer or Agribusiness, if a sole proprietorship. If the agricultural producer or agribusiness is not a sole proprietorship then the application form must be signed by all owners or by a duly authorized representative. The authorization of a representative to sign on behalf of an agricultural producer or agribusiness must be shown by a power of attorney, corporate resolution or other expression of authority that is consistent with the legal form of the agricultural producer or agribusiness;

2. Proof of Identity of the Signer of the application. One or more of the following may be used as proof of identity:

a. birth certificate;

b. government issued photo identification or other documentation acceptable to the agricultural loan committee.

3. Proof of Address of the Farm or Agribusiness. One or more of the following may be used as proof of address: copy of utility bill, Louisiana tax return from the previous year, lease agreement, business license, USDA Farm Service Administration (FSA) certification, or other documentation acceptable to the agricultural loan committee.

4. Proof of Ownership of the Farm or Agribusiness. One or more of the following may be used as proof of ownership: tax returns with appropriate schedules, stock certificates with proof of total number of shares, or other documentation acceptable to the agricultural loan committee.

5. Proof of Employees. One or more of the following may be used as proof of employees:

a. federal form 941;

b. Louisiana unemployment tax records, internal payroll register; or

c. other documentation acceptable to the agricultural loan committee.

6. Proof of Revenue. One or more of the following may be used as proof of gross revenues: Federal tax returns with appropriate schedules, actual revenue receipts, or other documentation acceptable to the agricultural loan committee.

7. The Agricultural Loan Committee may require an applicant to supply:

- a. tax returns with appropriate schedules;
- b. insurance claim forms;
- c. settlement sheets;
- d. FSA declarations;
- e. receipts for replacement; or
- f. other documentation when such documentation is

needed by the agricultural loan committee in deciding whether to approve or deny an application.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 36:

§707. Approval of Application

A. The applicant must provide all required information at least 10 working days prior to the meeting of the agricultural loan committee where the application will be considered, unless partial submission is allowed by LAFA's staff or the committee.

B. The agricultural loan committee, based on circumstances, may require terms and conditions that are not included in other loan/grants to be in a particular loan/grant so long as such terms and conditions are consistent with these regulations.

C. The agricultural loan committee may authorize LAFA's director to negotiate additional terms and conditions for a specific loan/grant within the parameters established by these regulations and the instructions of the agricultural loan committee.

D. The agricultural loan committee shall review each loan application and approve or deny the application, after consideration of the application, supporting documentation, comments of the applicant, and staff recommendations. However, the agricultural loan committee may defer action on an application to obtain additional information.

E. Within three business days after an application has been acted upon by the agricultural loan committee notice of the decision shall be sent to the applicant. Notification may be by U.S. mail, private commercial courier, hand delivery, fax, e-mail, or other electronic means. However, whatever the means of notification used must be designed to verify receipt of the notification by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 36:

§709. Agricultural Loan Committee; Establishment of; Purpose; Membership; Quorum

A. The agricultural loan committee is hereby established to consider and act on applications for loans or grants, or a combination of both made pursuant to this Part.

B. The agricultural loan committee shall consist of the following seven members:

1. the Commissioner of Agriculture and Forestry or his designee;

2. the Chancellor of the LSU AgCenter or his designee;

3. the Chancellor of the Southern University AgCenter or his designee;

4. the President of the Louisiana Farm Bureau Federation or his designee;

5. the Assistant Commissioner of Agriculture and Forestry, Office of Management and Finance or his designee;

6. one member at large appointed by the Commissioner of Agriculture and Forestry;

7. the Director of LAFA or his designee.

C. Four members of the agriculture loan committee shall constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 36:

§711. Disbursement of Funds

A. After the agricultural loan committee has approved an application the proceeds of the loan/grant shall be disbursed by LAFA's staff upon the signing of the loan or grant documents by the applicant and LAFA's director.

B. If the total amount of proceeds to be disbursed under the Louisiana Farm and Agribusiness Recovery and Loan Program exceeds the amount of available money then the amount received by each approved applicant shall be reduced on a pro-rata basis.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 36:

§713. Use of Loan and Grant Proceeds

A. Loan and grant proceeds may be used to:

1. pay current year expenses that are related to the preparation, planting, management and harvesting the current year crop as specified;

2. pay down or pay off existing crop production loans, if a financial institution has committed itself to furnish sufficient funding for preparing, planting, managing and harvesting the current year crop;

3. pay operating expenses (rent, insurance, utilities, etc.);

4. purchase inventory;

5. pay or refinance more expensive business-related debt to improve cash flow.

B. Loan and grant proceeds may not be used for:

1. acquisition of buildings or land;

2. new construction or reconstruction;

3. refinancing of state bridge loans;

4. payments of tax arrearages, government fines or penalties;

5. political or religious activities;

6. buying out any stockholder or equity holder in a business;

7. buying out or reimbursing any family member;

8. investing in instruments or investments for the sole purpose of a return on investment; or

9. a loss or expense for which insurance benefits has been or is to be paid or for which financial assistance has been or is to be provided from any other source, whether public or private.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 36:

§715. Delinquencies and Defaults

A. A loan shall become delinquent if the full monthly or periodic payment is not received within 10 calendar days following the due date or the loan is otherwise in default for non-compliance with any other provision of the loan.

1. Written notification of a delinquency shall be sent to the borrower giving the borrower the opportunity to cure the cause for the delinquency within 30 days from the date of the notice plus payment of any late fee .

2. If the delinquency is due to late payment, the director of LAFA, when he determines that such payment arrangements are justified by the circumstances, may make payment arrangements with the borrower to cure the delinquency before reporting the loan to the LAFA Board as a delinquent loan.

3. If the delinquency is not timely cured, the delinquent loan shall be reported to the LAFA Board, which may review and take action on the delinquent loan at any meeting of the board.

B. Upon review, the LAFA Board may direct that a loan be maintained in delinquent status and set the terms and time by which the payments may be brought up to date or the delinquency cured, or the board may declare the loan to be in default and that the entire amount due on the loan accelerated in accordance with the terms of the loan.

1. If a loan is continued as delinquent the LAFA Board shall establish the terms and time by which the borrower may bring the loan out of delinquency and into good standing and the borrower shall be notified of such terms and time.

2. If a loan is declared to be in default, notice of the default and a demand for full payment of all sums due, including the amount of any portion of the loan that may be forgiven as a grant, shall be sent to the borrower along with a request for full payment within 10 business days from the sending of the notice.

C. If a loan is continued as delinquent and the borrower does not accept the terms and time set by the board or if the borrower does not timely comply with the terms, the loan shall automatically go into default without further action of the board. Upon default, a demand for payment shall be made and if payment is not timely made the loan shall be turned over for collection, as provided for in these regulations.

D. If full payment is not received by the deadline given in the notice of default the loan, including the amount of any portion of the loan that may be forgiven as a grant, shall be turned over to an attorney for collection in accordance with the terms of the loan.

E. Any notice required by these regulations or by the terms of any loan may be sent by certified United States mail, return receipt requested; by any commercial courier who requires a receipt of delivery; or by hand delivery.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Louisiana Agricultural Finance Authority, LR 36:

Mike Strain DVM
Commissioner

0911#061

DECLARATION OF EMERGENCY

**Office of the Governor
Boxing and Wrestling Commission**

Boxing and Wrestling Standards
(LAC 46:XI.108)

The Louisiana State Boxing and Wrestling Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and adopt the following Rule. This Emergency Rule is necessary to further promote the safety of contestants, other participants and spectators in that it supplements the existing §108, Medical Requirements, to require participants in all sports under the jurisdiction of The Louisiana State Boxing and Wrestling Commission to provide copies of negative HIV, Hepatitis B and C test results directly to the Louisiana State Boxing and Wrestling Commission or an approved representative of the commission at least five days prior to any sanctioned event.

This Emergency Rule is effective upon signature, October 23, 2009, and will remain in effect for a period of 120 days, unless renewed by the commissioner or until adoption of the final Rule, whichever occurs first.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XI. Boxing and Wrestling

Chapter 1. General Rules

§108. Medical Requirements

A. Each contestant participating in any sport under this commission's jurisdiction must furnish to the commission physician a certified medical certificate evidencing that the contestant has been tested for HIV, Hepatitis B and Hepatitis C and said test results are negative. Said tests and certificates shall be dated not more than six months prior to the scheduled event and said certificate is to be presented at least five business days prior to any event to the event coordinator or other approved commission official with the only exception to be those allowed specifically by the coordinator on a case by case basis until such time that a national clearinghouse/database has been contracted by this commission for verification of these medical tests.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:61.D, R.S. 4:64 and R.S. 4:67.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Boxing and Wrestling Commission, LR 32:242 (February 2006), amended by the Department of Economic Development, Boxing and Wrestling Commission, LR 34:1601 (August 2008), LR 35:53 (January 2009), LR 36:

Patrick McGinty
Attorney

0910#004

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Motor Vehicle Commission

General Provisions
(LAC 46:V.103, 117 and 119)

The Louisiana Motor Vehicle Commission (the "Commission") is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 32:1251 et seq., adopts the following Emergency Rule, effective November 9, 2009. It shall remain in effect for 120 days or until this Rule takes effect through the normal promulgation process, whichever comes first.

The Louisiana Motor Vehicle Commission finds it necessary to adopt this Rule to implement the provisions of R.S. 32:1268.2. In the country's current economic condition, manufacturers of motor vehicles and recreational products are filing for bankruptcy, discontinuing lines, and ceasing to do business at an alarming rate making it unlawful under state law for dealers to sell their new inventory. R.S. 32:1268.2 was enacted by the legislature to allow previously franchised motor vehicle and recreational product dealers to continue to be licensed under circumstances where the manufacturer is in bankruptcy, is no longer in business, or has terminated in line. This Rule will allow motor vehicle and recreational product dealers to dispose of their new inventory under these circumstances.

The provisions of R.S. 32:1254(B)(9) and (E)(7) set forth insurance requirements for motor vehicles and recreational product dealers to be granted a license by the commission. The provisions were originally adopted at a time the commission primarily licensed new motor vehicle dealers. In July, 2009 the legislature transferred the licensing of recreational product dealers to the commission. The result of that legislation is that the requirements for garage liability and liability insurance do not necessarily fit the insurance needs of recreational product dealers. This Rule will require motor vehicle and recreational product dealers to obtain insurance coverage as determined by the dealer and its insurance agent to provide the proper coverage necessary to protect the dealers and consumers of this state.

R.S. 32:1254(A)(4) requires that a person who engages in business as a distributor or wholesaler in this State must be licensed by the commission. By definition a distributor or wholesaler, R.S. 32:1252(8), distributes, in whole or in part, sells or distributes motor vehicles, new, re-manufactured, re-conditioned or re-built motor vehicle motors or recreational products to motor vehicle or recreational product dealers. Their distribution is of products manufactured or re-built by a third party. In all cases the commission, when issuing a license to persons offering for sale the product of another, requires the applicant to provide a copy of its franchise allowing such representation under the provisions of R.S. 32:1254(C). This Rule will make it clear that a distributor or wholesaler must attach a copy of its franchise with the manufacturer or other third party whose product it will offer for sale or distribution to licensees of the commission in this state to its application for license.

R.S. 32:1261(1) sets forth acts which shall be a violation of R.S. 32:1251 et seq. by a manufacturer, distributor, wholesaler, distributor branch, factory branch, convertor or officer, agent, or other representative of these when asserted against any licensee of the commission. Because of the original jurisdiction of the commission the subparagraphs of R.S. 32:1261 refer only to motor vehicles or motor vehicle dealers. However, as a result of the transfer of recreational products to the commission, and the application of Section 1261 to licensees of the commission, all subsections of Section 1261 apply to recreational products and recreational product dealers. This Rule will make it clear that all references to motor vehicles or motor vehicle dealers in this Section apply to recreational products and recreational product dealers.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part V. Automotive Industry

Subpart 1. Motor Vehicle Commission

Chapter 1. General Requirements

§103. Application for License

A. – B. ...

C. All applications for license under the Law shall include evidence that the applicant has such liability protection covering its place of business and its operation that complies with the financial responsibility laws of the state of Louisiana and as determined by the applicant and its insurance agent that are necessary to provide coverage to the place and nature of the business sought to be licensed to protect the applicant and the consumers of this state.

D. All applications for license as a distributor or wholesaler shall include a copy of its franchise with the person, licensed by the commission, whose product it will offer for sale to the licensees of the commission in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Louisiana Motor Vehicle Commission, LR 34: Adopted by the Department of Commerce, Motor Vehicle Commission, October 11, 1960, filed with the Office of the State Register August 14, 1974, re-promulgated April 10, 1975 to be effective June 9, 1975, amended by the Office of the governor, Division of Administration, Motor Vehicle Commission, LR 36:

§117. Manufacturer Termination of Franchise:

Liquidation of New Vehicle Inventory: Exception

A. If the termination, cancellation, or nonrenewal of a licensee's franchise by the manufacturer, distributor, or factory branch is the result of the termination, elimination, or cessation of a motor vehicle or recreational product line (a "vehicle"), whether by bankruptcy, closure of its business or otherwise (their "termination"), the license issued by the commission may remain in effect or be renewed at the discretion of the commission under the following circumstances:

1. the vehicle(s) was acquired in the ordinary course of business as a new vehicle by a person licensed to sell that vehicle;

2. the termination is not a result of the revocation by the commission of the licensee's license or the licensee's conviction of a crime;

3. the vehicle is held in the inventory of the licensee on the date of the termination;

4. the vehicle is sold by the licensee within six months of the date the termination unless this period is extended upon application by the licensee in the commission's discretion;

5. the commission's discretion to allow the licensee to continue in effect does not entitle a licensee whose franchise agreement has been terminated, canceled, or rejected to continue to perform warranty service repairs or continue to be eligible to offer or receive consumer or dealer incentives offered by the manufacturer, distributor, or factory branch.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Motor Vehicle Commission, LR 36:

§119. Unauthorized Acts

A. All references to violations of the law in R.S. 32:1261(1) to motor vehicles or motor vehicle dealers shall also apply to recreational products or recreational product dealers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1253.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Motor Vehicle Commission, LR 36:

Lessie A. House
Executive Director

0911#107

DECLARATION OF EMERGENCY

Office of the Governor Division of Administration Office of Statewide Uniform Payroll

Temporary Qualification Procedure Long-Term Care Insurance Vendors (LAC 4:III.107)

The Division of Administration through the Office of State Uniform Payroll, is exercising the emergency provisions of the Administrative Procedures Act, R.S. 49:953(B), and pursuant to the authority granted under R.S. 42:455 (A), adopts the following Emergency Rule effective November 1, 2009. Unless extended, this Rule shall remain in effect for the maximum period allowed under the APA, or until it expires under its own terms and conditions, whichever period is shorter.

The Division of Administration, through the Office of State Uniform Payroll, finds it necessary to issue this Emergency Rule to insure continued access by state employees to long-term care insurance coverage. State employees paid through the ISIS Human Resource System may purchase long-term care insurance policies through payroll deductions. These plans benefit state employees by providing long-term care benefits due to disability or illness, and help to protect an employee's assets if living in assisted care facilities becomes necessary. Although any number of vendors may qualify under LAC rules to sell long-term care insurance through payroll deductions, the sole qualified vendor has informed the administration that the insurer it

represents will no longer sell such policies in Louisiana after December 31, 2009. Qualification of additional vendors and/or insurers takes in excess of one year under existing rules. In the interim, the welfare of state employees who may wish to participate in long-term care insurance plans will be adversely affected unless the ordinary qualification time frame is temporarily shortened.

Title 4

ADMINISTRATION

Part III. Payroll

Chapter 1. Qualification of Long-Term Care Insurance Products

§107. Temporary Qualification Procedure Long-Term Care Insurance Vendors

A. Any vendor seeking to sell long-term care insurance policies through direct payroll deductions for the year 2010 may submit a letter of request for an application form to the Office of State Uniform Payroll (OSUP) no later than November 20, 2009. OSUP shall reasonably attempt to accommodate requests for applications made in person, by mail, by telephone or through electronic means. Application forms will then be forwarded to vendors to be completed and submitted to OSUP by December 31, 2009.

B. The ordinary rules controlling application review and approval are waived in regard to subject applications submitted on or before December 31, 2009. The following timetable shall apply insofar as is practicable:

1. starting Jan 4, 2010 OSUP and the Employees Payroll Benefits Committee will begin review of all applications;

2. vendors will be notified by February 10, 2010 of approval or denial;

3. solicitation of approved products may begin March 1, 2010. Payroll deductions may begin with the first pay period in March 2010.

C. Nothing in this Emergency Rule shall be construed to waive the minimum requirements established by law for vendors and insurers offering long-term care insurance policies through payroll deductions. However, Form SED-3 evidencing an insurer's compliance with R.S. 42:455 and a product's benefits may be verified by the applicant vendor and submitted directly to OSUP without individual departmental certification. Any application which cannot be verified as complying with the requirements of R.S. 42:455 shall be rejected.

D. Any regulation or policy establishing a deadline for vendors of long-term care insurance policies to enroll a minimum number of employees within a set period of time is extended until February 28, 2011. Nothing in this Emergency Rule shall be construed to prevent any other vendor from qualifying to solicit and to sell long-term care insurance policies through payroll deductions by ordinary process after December 31, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455 (A).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Statewide Uniform Payroll, LR 36:

Angele Davis
Commissioner

0911#006

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Adult Dentures
Repeal of Reimbursement Rate Reduction
(LAC 50:XXV.701)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:XXV.701 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 anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the Department of Health and Hospitals, Bureau of Health Services Financing determined that it was necessary to amend the provisions governing the reimbursement methodology for adult denture services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department promulgated two Emergency Rules to repeal the provisions of the May 1, 2009 Emergency Rule and to amend the reimbursement methodology for adult dentures to adjust the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). The department has now determined that it is necessary to repeal the provisions of the August 4, 2009 Emergency Rule which adjusted the reimbursement rates for adult dentures.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the August 4, 2009 Emergency Rule which adjusted the reimbursement rates for adult dentures.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXV. Adult Dentures

Chapter 7. Reimbursement

§701. Fees

A. ...

B. 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, Office of the Secretary, Bureau of Health Services Financing, LR 31:81 (January 2005), repromulgated LR 31:1589 (July 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0911#075

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Outlier Payment Methodology
(LAC 50:V.954)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.954 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.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted provisions governing the reimbursement methodology for payments to disproportionate share hospitals for catastrophic costs associated with providing medically necessary services to children less than six years of age (*Louisiana Register*, Volume 20, Number 6). These provisions also addressed payments to all acute care hospitals for catastrophic costs associated with providing medically necessary services to infants one year of age or younger. An outlier payment is calculated on an individual case basis and paid at cost if the covered charges for medically necessary services exceed a designated percent of the prospective payment. The June 20, 1994 Rule was subsequently amended to: 1) reduce the outlier payments made to private (non-state) hospitals by amending the definition of marginal cost; 2) change the base period for the hospital calculation of payments; and 3) establish a deadline for receipt of the written request for outlier payments (*Louisiana Register*, Volume 29, Number 6).

In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the department determined that it was necessary to amend the provisions of the June 20, 2003 Rule to reduce outlier payments made to non-rural, non-state hospitals and to repromulgate these provisions governing outliers in a codified format for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 35, Number 5). Act 122

of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department promulgated an Emergency Rule to repeal the payment reduction provisions of the May 1, 2009 Emergency Rule which reduced the outlier payments made to non-rural, non-state hospitals (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 4, 2009 Emergency Rule.

Effective December 3, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing repeals the payment reduction provisions of the May 1, 2009 Emergency Rule governing outlier payments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§954. Outlier Payments

A. Pursuant to §1902(s)(1) of Title XIX of the Social Security Act, additional payments called outlier payments shall be made to hospitals for catastrophic costs associated with inpatient services provided to:

1. children less than six years of age who receive services in a disproportionate share hospital setting; and
2. infants less than one year of age who receive services in any acute care hospital setting.

B. The marginal cost factor for outlier payments is considered to be 100 percent of costs after the costs for the case exceed the sum of the hospital's prospective payment and any other payment made on behalf of the patient for that stay by any other payee.

1. Repealed.

C. To qualify as a payable outlier claim, a deadline of not later than six months subsequent to the date that the final claim is paid shall be established for the receipt by the department of the written request for outlier payments.

D. The hospital specific cost to charge ratio shall be reviewed bi-annually and updated according to the current cost report data.

E. Outlier payments are not payable for transplant procedures.

F. - H. 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 35:

Interested persons may submit written comments to Jerry Phillips, 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.

Alan Levine
Secretary

0911#085

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Inpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Reduction
(LAC 50:V.953, 955, and 959)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.953, §955 and §959 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." 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 and to avoid a budget deficit in the medical assistance programs in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for inpatient hospital services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). The final Rule was published September 20, 2009 (*Louisiana Register*, Volume 35, Number 9). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing the reimbursement methodology for inpatient hospital services to further reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 5). In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the bureau promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for inpatient hospital services to provide a supplemental payment to non-rural, non-state hospitals that demonstrated substantial financial and operational challenges in the aftermath of Hurricanes Katrina, Rita, Gustav and Ike (*Louisiana Register*, Volume 35, Number 7).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The bureau determined that it was necessary to repeal the rate reduction provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*,

Volume 35, Number 8) and amended the reimbursement methodology for inpatient hospital services to adjust the rate reductions (*Louisiana Register*, Volume 35, Number 8). The bureau subsequently amended the provisions of the July 1, 2009 Emergency Rule for supplemental payments to non-rural, non-state hospitals to incorporate the provisions of the August 4, 2009 Emergency Rule which adjusted the rate reductions (*Louisiana Register*, Volume 35, Number 10). This Emergency Rule is being promulgated to amend the provisions of the August 4, 2009 Emergency Rule to incorporate the provisions of the October 20, 2009 Emergency Rule for supplemental payments and to reorganize these provisions in the appropriate place in LAC 50:V.953, 955 and §959.

Taking the proposed per diem rate reduction into consideration, the department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) inpatient hospital services under the State Plan are available at least to the extent that they are available to the general population in the state.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 4, 2009 Emergency Rule governing the reimbursement methodology for inpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 9. Non-Rural, Non-State Hospitals

Subchapter B. Reimbursement Methodology

§953. Acute Care Hospitals

A. - J. ...

K. Hospitals Impacted by Hurricane Katrina (Region 1). Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with those in §963.A and outpatient supplemental payments) will not exceed \$170,000,000.

1. Qualifying Criteria. In order to qualify for the supplemental payment, the non-rural, non-state acute care hospital must be located in DHH Administrative Region 1 (New Orleans) and identified in the July 17, 2008 United States Government Accountability Office report as a hospital that has demonstrated substantial financial and operational challenges in the aftermath of Hurricane Katrina.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed a specified individualized hospital limit. Payments will be distributed based on Medicaid paid claims data from state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the hospital specific cap is reached, whichever occurs first.

L. Other Hospitals Impacted by Hurricanes Katrina and Rita. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010.

Maximum aggregate payments to all qualifying hospitals in this group (along with those in §959.C and §963.B payments) will not exceed \$10,000,000.

1. Qualifying Criteria. Non-rural, non-state acute care hospitals that do not qualify for payment under §953.E provisions may receive a supplemental payment if the hospital is located in either the New Orleans or Lake Charles metropolitan statistical area (MSA), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 1,000, but less than or equal to 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$130 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

M. Hospitals Impacted by Hurricanes Gustav and Ike. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying non-rural, non-state acute care hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §959.D and §963.C payments) will not exceed \$7,500,000.

1. Qualifying Criteria. Non-rural, non-state acute care hospitals that do not qualify for payment under §953.E or §953.F may receive a supplemental payment if the hospital is located in either DHH Administrative Region 2 (Baton Rouge) or 3 (Thibodaux), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 2,500, but less than or equal to 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$105 per Medicaid paid day.

iii. Qualifying hospitals with greater than 1,000, but less than or equal to 2,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$225 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

N. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to acute care hospitals shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 2009.

1. Payments to small rural hospitals as defined in R.R. 40:1300 shall be exempt from this reduction.

2. - 2.b.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, Office of the Secretary, Bureau of Health Services Financing, LR 34:876 (May 2008), amended LR 34:877 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 35:

§955. Long Term Hospitals

A. - C. ...

D. Hurricane Impacted Hospitals. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying long term hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §961.A payments) will not exceed \$500,000.

1. Qualifying criteria. In order to qualify for the supplemental payment, the long term hospital must have had at least 100 paid Medicaid days for state fiscal year 2008 service dates and must be located in one of the following DHH administrative regions:

- a. Region 1 (New Orleans);
- b. Region 2 (Baton Rouge);
- c. Region 3 (Thibodaux);
- d. Region 5 (Lake Charles); or
- e. Region 9 (Mandeville).

2. Each eligible hospital shall receive quarterly supplemental payments at the rate of \$40 per Medicaid paid day for state fiscal year 2008 service dates. Payments will end on December 31, 2010 or when the \$500,000 maximum payment limit for this group is reached, whichever occurs first.

E. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to long term hospitals for inpatient services shall be reduced by 6.3 percent of the per diem rate on file as of August 3, 2009.

1. - 2. 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, Office of the Secretary, Bureau of Health Services Financing, LR: 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 35:

§959. Inpatient Psychiatric Hospital Services

A. - C. ...

D. Free-Standing Psychiatric Hospitals Impacted by Hurricanes Katrina and Rita. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying free-standing psychiatric hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §953.F and §961.A payments) will not exceed \$10,000,000.

1. Qualifying criteria. Non-rural, non-state free-standing psychiatric hospitals that do not qualify for payment under §953.F provisions may receive a supplemental payment if the hospital is located in either the New Orleans or Lake Charles metropolitan statistical area

(MSA), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 1,000, but less than or equal to 7,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$130 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

E. Free-Standing Psychiatric Hospitals Impacted by Hurricanes Gustav and Ike. Effective for dates of service on or after July 1, 2009, a quarterly supplemental payment will be issued to qualifying free-standing psychiatric hospitals for services rendered from July 1, 2009 through December 31, 2010. Maximum aggregate payments to all qualifying hospitals in this group (along with §953.G and §961.C payments) will not exceed \$7,500,000.

1. Qualifying Criteria. Non-rural, non-state free-standing psychiatric hospitals that do not qualify for payment under §953.E or §953.F may receive a supplemental payment if the hospital is located in either DHH Administrative Region 2 (Baton Rouge) or 3 (Thibodaux), had at least 1,000 paid Medicaid days for state fiscal year 2008 service dates and is currently operational.

2. Each eligible hospital shall receive quarterly supplemental payments which in total do not exceed \$1,200,000 per hospital for the 18 month period.

a. Payments will be distributed as follows using Medicaid paid days for state fiscal year 2008 service dates.

i. Qualifying hospitals with greater than 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$60 per Medicaid paid day.

ii. Qualifying hospitals with greater than 2,500, but less than or equal to 20,000 paid Medicaid days for state fiscal year 2008 service dates will be paid \$105 per Medicaid paid day.

iii. Qualifying hospitals with greater than 1,000, but less than or equal to 2,500 paid Medicaid days for state fiscal year 2008 service dates will be paid \$225 per Medicaid paid day.

b. Payments will end on December 31, 2010 or when the \$1,200,000 limit is reached, whichever occurs first.

F. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to non-rural, non-state free-standing psychiatric hospitals shall be reduced by 5.8 percent of the rate on file as of August 3, 2009.

1. - 2.b. Repealed.

G. Effective for dates of service on or after August 4, 2009, the prospective per diem rate paid to non-rural, non-state distinct part psychiatric units shall be reduced by 6.3 percent of the rate on file as of August 3, 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 34:876 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1895 (September 2009), LR 35:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#076

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Laboratory and Radiology Services
Reimbursement Rate Reduction
(LAC 50:XIX.4329 and 4334-4337)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XIX.4329 and §§4334-4337 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." 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 promulgated Emergency Rules which reduced the reimbursement rates paid for laboratory and radiology services (*Louisiana Register*, Volume 35, Number 3) and clarified the reimbursement methodology for radiation therapy centers (*Louisiana Register*, Volume 35, Number 6). These provisions were published as a final Rule on September 20, 2009 (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2010, the department determined that it was necessary to promulgate an Emergency Rule to amend the provisions governing the reimbursement methodology for laboratory and radiology services to further reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). This

Emergency Rule is being promulgated to amend the provisions of the August 4, 2009 Emergency Rule to revise the formatting of LAC 50:XIX.4329 and §§4334-4337 as a result of the promulgation of the September 20, 2009 final Rule governing the reimbursement methodology for laboratory and radiology services. This action is being taken to ensure that these provisions are appropriately incorporated into the Louisiana Administrative Code.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 4, 2009 Emergency Rule governing laboratory and radiology services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIX. Other Services

Subpart 3. Laboratory and Radiology

Chapter 43. Billing and Reimbursement

Subchapter B. Reimbursement

§4329. Laboratory Services (Physicians and Independent Laboratories)

A. - F. ...

G. Effective for dates of service on or after August 4, 2009, the reimbursement rates for laboratory services shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 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 28:1025 (May 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 35:

§4334. Radiology Services

A. - E. ...

F. Effective for dates of service on or after August 4, 2009, the reimbursement rates for radiology services shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 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, Bureau of Health Services Financing, LR 35:1897 (September 2009), LR 35:

§4335. Portable Radiology Services

A. - C. ...

D. Effective for dates of service on or after August 4, 2009, the reimbursement rates for portable radiology services shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 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, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:1898 (September 2009), LR 35:

§4337. Radiation Therapy Centers

A. - C. ...

D. Effective for dates of service on or after August 4, 2009, the reimbursement rates for radiology services provided by radiation therapy centers shall be reduced by 4.7 percent of the fee amounts on file as of August 3, 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, Bureau of Health Services Financing, LR 35:1898 (September 2009), LR 35:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#077

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Mental Health Rehabilitation Program Service Limitations and Reimbursement Rate Reduction (LAC 50:XV.401-405 and 901)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XV.401-405 and amends §901 in the Medical Assistance Program as authorized by R.S. 36:254, pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." 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 and to avoid a budget deficit in the medical assistance programs in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for mental health rehabilitation services to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). The final Rule was published September 20, 2009 (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2010, the bureau determined that it was necessary to further reduce the reimbursement rates paid for mental health rehabilitation services and to establish service limitations (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to amend the provisions of the August 4, 2009 Emergency Rule to revise

the formatting of LAC 50:XV.401-405 and §901 as a result of the promulgation of the September 20, 2009 final Rule governing the reimbursement methodology for mental health rehabilitation services. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 4, 2009 Emergency Rule governing the reimbursement methodology for mental health rehabilitation services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 3. Covered Services and Staffing Requirements

Subchapter D. Service Limitations

§401. Individual Daily Service Limits

A. Individual daily service limits shall be placed on the following services.

1. Individual, Family or Group Counseling (any modifier). The maximum number of units provided on any given date of service shall not exceed eight units (two hours).

2. Psychosocial Skills Training. The maximum number of units provided on any given date of service shall not exceed 12 units (three hours).

3. Community Supports. The maximum number of units provided on any given date of service shall not exceed 12 units (three hours).

4. Assessment. The maximum number of units provided for an initial assessment shall not exceed six units (1.5 hours).

5. Reassessment. The maximum number of units provided for a reassessment shall not exceed three units (0.75 hours).

B. Medicaid will not reimburse services in excess of these limits.

1. Exceptions may be made on a case-by-case basis for special circumstances or crisis situations with documentation of medical necessity. Requests to exceed the established limits are subject to review and approval 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, Bureau of Health Services Financing, LR 35:

§403. Combined Daily Service Limits

A. Daily service limits shall be placed on the combination of counseling, psychosocial skills training and community support services. The maximum units of service for a combination of these services shall not exceed a total of 16 units (four hours) on any given date of service.

1. The individual daily service limits in §401 are applicable to the services that are being combined.

B. Medicaid will not reimburse services in excess of these limits.

1. Exceptions may be made on a case-by-case basis for special circumstances or crisis situations with documentation of medical necessity. Requests to exceed the established limits are subject to review and approval 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, Bureau of Health Services Financing, LR 35:

§405. Combined Weekly Service Limits

A. Weekly service limits shall be placed on the combination of counseling, psychosocial skills training and community support services. The maximum units of service for a combination of these services shall not exceed a total of 80 units (20 hours) in any given calendar week (Sunday through Saturday).

1. The individual and combined daily service limits in §401 and §403 are applicable to these services.

B. Medicaid will not reimburse services in excess of these limits.

1. Exceptions may be made on a case-by-case basis for special circumstances or crisis situations with documentation of medical necessity. Requests to exceed the established limits are subject to review and approval 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, Bureau of Health Services Financing, LR 35:

Chapter 9. Reimbursement

§901. Reimbursement Methodology

A. – C. ...

D. Effective for dates of service on or after August 4, 2009, the reimbursement rates for the following MHR services shall be reduced by 1.23 percent of the fee amounts on file as of August 3, 2009:

1. counseling;
2. oral medication administration;
3. psychosocial skills training;
4. community supports; and
5. injections.

E. Effective for dates of service on or after August 4, 2009, the reimbursement rates for parent/family intervention (intensive) services shall be reduced by 17.6 percent of the fee amounts on file as of August 3, 2009.

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

HISTORICAL NOTE: Promulgate by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1091 (May 2005), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1899 (September 2009), amended LR 35:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#078

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Multi-Systemic Therapy
Reimbursement Rate Reduction
(LAC 50:XV.25701)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XV.25701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: “The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law.” 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 governing the coverage and reimbursement of multi-systemic therapy (MST) for youth with serious emotional/behavioral disturbances who are at risk of out-of-home placement or returning home from out-of-home placement as a result of the emotional/behavioral disturbance (*Louisiana Register*, Volume 35, Number 2). As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for multi-systemic therapy to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to continue the provisions of the August 4, 2009 Emergency Rule. This action is necessary to avoid a budget deficit in the medical assistance programs.

Effective December 3, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for multi-systemic therapy to reduce the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 17. Multi-Systemic Therapy

Chapter 257. Reimbursement

§25701. Reimbursement Methodology

A. - A.2. ...

B. Effective for dates of service on and after August 4, 2009, the reimbursement rates for multi-systemic therapy services will be reduced by 5.17 percent of the rates on file as of August 3, 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, Bureau of Health Services Financing, LR 35:245 (February 2009), amended LR 35:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#086

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services
Non-Rural, Non-State Hospitals
Reimbursement Rate Reduction
(LAC:V.5313, 5513, 5713, 5913 and 6115)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:V.5313, 5513, 5713, 5913 and 6115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." 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 promulgated an Emergency Rule to reduce the reimbursement paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35, Number 2). The final Rule was published September 20, 2009 (*Louisiana Register*, Volume 35, Number 9). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to further reduce the reimbursement rates paid to non-rural, non-state hospitals for outpatient services (*Louisiana Register*, Volume 35,

Number 5). Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The bureau determined that it was necessary to repeal the provisions of the May 1, 2009 Emergency Rule and to amend the reimbursement methodology for non-rural, non-state hospitals to adjust the reimbursement rates for outpatient services (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to amend the provisions of the August 4, 2009 Emergency Rule to revise the formatting of LAC 50:V.5313, §5513, §5713, §5913 and §6115 as a result of the promulgation of the September 20, 2009 final Rule governing the reimbursement methodology for outpatient hospital services.

Taking into consideration the 5.65 percent reduction in outpatient hospital rates in state fiscal year 2010, the Department has carefully reviewed the proposed rates and is satisfied that they are consistent with efficiency, economy and quality of care and are sufficient to enlist enough providers so that private (non-state) outpatient hospital services under the State Plan are available at least to the extent that they are available to the general population in the state. This action is being taken to ensure that these provisions are appropriately incorporated into the Louisiana Administrative Code.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the August 4, 2009 Emergency Rule governing the reimbursement methodology for outpatient services rendered by non-rural, non-state hospitals.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 5. Outpatient Hospitals

Chapter 53. Outpatient Surgery

Subchapter B. Reimbursement Methodology

§5313. Non-Rural, Non-State Hospitals

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient surgery shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 35:

Chapter 55. Clinic Services

Subchapter B. Reimbursement Methodology

§5513. Non-Rural, Non-State Hospitals

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient clinic services shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 35:

Chapter 57. Laboratory Services
Subchapter B. Reimbursement Methodology
§5713. Non-Rural, Non-State Hospitals

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient laboratory services shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 36:1900 (September 2009), amended LR 35:

Chapter 59. Rehabilitation Services
Subchapter B. Reimbursement Methodology
§5913. Non-Rural, Non-State Hospitals

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient rehabilitation services provided to recipients over the age of three years shall be reduced by 5.65 percent of the fee schedule on file as of August 3, 2009.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 35:

Chapter 61. Other Outpatient Hospital Services
Subchapter B. Reimbursement Methodology
§6115. Non-Rural, Non-State Hospitals

A. ...

B. Effective for dates of service on or after August 4, 2009, the reimbursement paid to non-rural, non-state hospitals for outpatient hospital services other than clinical diagnostic laboratory services, outpatient surgeries, rehabilitation services and outpatient hospital facility fees shall be reduced by 5.65 percent of the rates effective as of August 3, 2009. Final reimbursement shall be at 78.48 percent of allowable cost through the cost settlement process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Service Financing, LR 35:1900 (September 2009), amended LR 35:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#079

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Personal Care Services—Long-Term
Reimbursement Rate Reduction (LAC 50:XV.12917)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends LAC 50:XV.12917 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." 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 and to avoid a budget deficit in the medical assistance programs in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for long-term personal care services (LT-PCS) to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 2). The final Rule was published September 20, 2009 (*Louisiana Register*, Volume 35, Number 9).

As a result of a budgetary shortfall in state fiscal year 2010, the department determined that it was necessary to further reduce the reimbursement rates paid for LT-PCS. (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to amend the provisions of the August 4, 2009 Emergency Rule to revise the formatting of LAC 50:XV.12917 as a result of the promulgation of the September 20, 2009 final Rule governing the reimbursement methodology for long-term personal care services. This action is necessary to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services amends the provisions of the August 4, 2009 Emergency Rule governing the reimbursement methodology for long-term personal care services.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 9. Personal Care Services

Chapter 129. Long-Term Care

§12917. Reimbursement Methodology

A. – D. ...

E. Effective for dates of service on or after August 4, 2009, the reimbursement rate for long-term personal care services shall be reduced by 4.8 percent of the rate on file as of August 3, 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 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:253 (February 2008), LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:1901 (September 2009), amended LR 35:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#080

DECLARATION OF EMERGENCY

Department of Health and Hospitals
Bureau of Health Services Financing

Pharmacy Program—Medication Administration
H1N1 Immunizations
(LAC 50:XXIX.123 and 991)

Editor's Note: Sections 123 and 991 are being repromulgated to correct a submission error. This Emergency Rule was originally promulgated in the October 20, 2009 *Louisiana Register* on page 2159.

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:XXIX.123 and §991 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 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 U.S. Department of Health and Human Services (DHHS) renewed the declaration of a public health

emergency involving novel influenza A (2009 H1N1) on July 24, 2009. The Centers for Medicare and Medicaid Services (CMS) subsequently provided guidance and technical assistance regarding coverage of vaccine administration and the provision of vaccinations at non-traditional care sites. In response to the renewed declaration and CMS guidance, the Louisiana State Health Officer issued an Emergency Order and Protocol to allow eligible pharmacists to administer influenza vaccinations. The Department of Health and Hospitals, Bureau of Health Services Financing now proposes to amend the provisions governing the Pharmacy Program to incorporate provisions to allow payment for the administration of H1N1 vaccine by qualified Medicaid enrolled pharmacists.

This action is being taken to promote the health and welfare of Medicaid recipients by facilitating access to the H1N1 vaccine. It is estimated that the implementation of this proposed Rule will increase expenditures in the Medicaid Program by approximately \$1,876,200 for state fiscal year 2009-2010.

Effective October 10, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Pharmacy Program to allow payment to pharmacies for administration of the H1N1 vaccine by qualified pharmacists.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXIX. Pharmacy

Chapter 1. General Provisions

§123. Medication Administration

A. H1N1 Vaccine Administration. The department shall provide coverage for administration of the H1N1 vaccine by a qualified pharmacist when:

1. the pharmacist has been credentialed by the Louisiana Board of Pharmacy to administer medications; and
2. the pharmacist is Medicaid enrolled.

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:

Chapter 9. Methods of Payment

Subchapter H. Medication Administration Payments

§991. Vaccine Administration Fees

A. Effective for dates of service on and after October 10, 2009, the reimbursement to pharmacies for immunization administration (intramuscular or intranasal) performed by qualified pharmacists, is a maximum of \$15.22. This fee includes counseling, when performed.

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:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#081

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program
Anesthesia Services
Reimbursement Rate Reduction
(LAC 50:IX.15111)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15111 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." 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 and to avoid a budget deficit in the medical assistance programs in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for anesthesia services to reduce the reimbursement rates paid to certified registered nurse anesthetists (CRNAs) for services rendered to Medicaid recipients (*Louisiana Register*, Volume 35, Number 3). The final Rule was published September 20, 2009 (*Louisiana Register*, Volume 35, Number 9). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the provisions governing anesthesia services to further reduce the reimbursement rates paid to CRNAs (*Louisiana Register*, Volume 35, Number 5).

Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department determined that it was necessary to repeal the provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and to amend the reimbursement

methodology for anesthesia services to reduce the reimbursement rates paid to physicians (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to amend the provisions of the August 4, 2009 Emergency Rule to incorporate exclusions to the rate reduction for maternity-related anesthesia services and anesthesia services rendered to recipients under the age of 16. This Emergency Rule will also revise the formatting of LAC 50:IX.15111 as a result of the promulgation of the September 20, 2009 final Rule governing the reimbursement methodology for anesthesia services.

This action is necessary to assure the availability of adequate health care services for children and pregnant women. It is estimated that implementation of this Emergency Rule will reduce the previously anticipated savings for the anesthesia services rate reduction from \$544,937 to \$418,082 in state fiscal year 2010.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 4, 2009 Emergency Rule governing the reimbursement methodology for anesthesia services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

§15111. Anesthesia Services

A. - D. ...

E. Effective for dates of service on or after August 4, 2009, the reimbursement rates paid for anesthesia services that are performed under the professional licensure of a physician (anesthesiologist or other specialty) shall be reduced by 3.5 percent of the rates in effect on August 3, 2009.

1. Effective for dates of service on or after November 20, 2009, maternity-related anesthesia services and anesthesia services rendered to recipients under the age of 16 shall be exempt from the August 4, 2009 rate reduction on anesthesia services performed by a physician (anesthesiologist or other specialty).

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 35:1902 (September 2009), amended LR 35:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#082

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Professional Services Program
Physician Services
Reimbursement Rate Reduction
(LAC 50:IX.15103)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:IX.15103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law."

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 18 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 provisions governing the reimbursement methodology for physician services to adjust the reimbursement rates. In addition, the bureau repealed the provisions contained in the following rules governing the reimbursement methodology for physician services: December 20, 2000; May 20, 2001; August 20, 2002; and February 20, 2007 (*Louisiana Register*, Volume 34, Number 8).

As a result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule to adjust the reimbursement rates paid for physician services (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to amend the August 4, 2009 Emergency Rule to incorporate exclusions to the rate reduction for prenatal evaluation and management, and delivery services rendered by physicians.

This action is necessary to assure the availability of adequate health care services for children and pregnant women. It is estimated that implementation of this Emergency Rule will reduce the previously anticipated savings for physician services rate reductions from \$18,455,238 to \$14,824,194 in state fiscal year 2010.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the August 4, 2009 Emergency Rule governing the reimbursement methodology for physician services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

§15103. Physician Services

A. - B.2. ...

C. Effective for dates of service on or after August 4, 2009, the reimbursement for all physician services rendered to recipients 16 years of age or older shall be reduced to 80 percent of the 2009 Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

1. For those services that are currently reimbursed at a rate below 80 percent of the Louisiana Medicare Region 99 allowable, effective for dates of service on or after August 4, 2009, the reimbursement for these services shall be increased to 80 percent of the Louisiana Medicare Region 99 allowable or billed charges, whichever is the lesser amount.

2. The following physician services are excluded from the rate adjustment:

- a. preventive medicine evaluation and management;
- b. immunizations;
- c. family planning services; and
- d. select orthopedic reparative services.

3. Effective for dates of service on or after November 20, 2009, the following physician services are excluded from the rate adjustment:

- a. prenatal evaluation and management; and
- b. delivery 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 34:1629 (August 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:

Implementation of these provisions 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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#083

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Prosthetics and Orthotics Reimbursement Rate Reduction (LAC 50:XVII.501)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XVII.501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by Act 10 of the 2009 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures remain at the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, and other measures as permitted under federal law." 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 promulgated an Emergency Rule to amend the provisions governing the reimbursement methodology for prosthetic and orthotic devices to reduce the reimbursement rates (*Louisiana Register*, Volume 35, Number 3). In anticipation of projected expenditures in the Medical Vendor Program exceeding the funding allocated in the General Appropriations Act for state fiscal year 2010, the bureau determined that it was necessary to amend the March 7, 2009 Emergency Rule to further reduce the reimbursement rates paid for prosthetic and orthotic devices (*Louisiana Register*, Volume 35, Number 5). Act 122 of the 2009 Regular Session of the Louisiana Legislature allocated additional funds to the Medical Vendor Program for the purpose of making supplemental payments to private providers to lessen the impact of potential budget reductions in state fiscal year 2010. The department promulgated Emergency Rules to repeal the provisions of the May 1, 2009 Emergency Rule (*Louisiana Register*, Volume 35, Number 8) and to amend the reimbursement methodology for prosthetics and orthotics to adjust the reimbursement rates (*Louisiana Register*, Volume 35, Number 8). This Emergency Rule is being promulgated to amend the provisions of the August 4, 2009 Emergency Rule to revise the formatting of LAC 50:XVII.501 as a result of the promulgation of the September 20, 2009 final Rule governing the reimbursement methodology for prosthetics and orthotics. This action is being taken to ensure that these provisions are appropriately incorporated into the *Louisiana Administrative Code*.

Effective November 20, 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amends the August 4, 2009 Emergency Rule governing the reimbursement methodology for prosthetics and orthotics.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XVII. Prosthetics and Orthotics

Subpart 1. General Provisions

Chapter 5. Reimbursement

§501. Reimbursement Methodology

A. - C.1. ...

D. Effective for dates of service on or after August 4, 2009, the reimbursement for prosthetic and orthotic devices for recipients 21 years of age and older shall be reduced by 4 percent of the fee amounts on file as of August 3, 2009.

1. The rate reduction shall not apply to items that do not appear on the fee schedule and are individually priced.

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 31:1597 (July 2005), amended LR 34:881 (May 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), LR 35:

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 Jerry Phillips, 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.

Alan Levine
Secretary

0911#084

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

Death Penalty (LAC 22:I.103)

In accordance with the provisions of R.S. 49:953, the Department of Public Safety and Corrections, Corrections Services, hereby determines that adoption of an emergency rule for implementation of the amendment of Department Regulation Number C-03-001, Death Penalty, is necessary.

The department is amending this rule to comply with the provisions of R.S. 15:570.E and R.S. 15:570(F), which specifies the identities of person/s who participate in an execution of the death sentence who are subject to public disclosure.

R.S. 15:570(E) prohibits public disclosure of the person/s selected by the warden of the Louisiana State Penitentiary to administer the lethal injection. R.S. 15:570(F) prohibits public disclosure of any person other than the persons specified in R.S. 15:570(E) who participate in an execution of the death sentence, either directly or indirectly, and information about those persons which could lead to the determination of the identities of those persons shall not be subject to public disclosure in any manner whatsoever.

The reason for this Emergency Rule is due to an imminent execution of a Louisiana death row offender.

For the foregoing reasons, the Department of Public Safety and Corrections, Corrections Services, has determined that the adoption of an Emergency Rule for implementation of Department Regulation Number C-03-001, Death Penalty, is necessary and hereby provides notice of its Declaration of Emergency, effective on November 20, 2009, in accordance with R.S. 49:953. This Emergency Rule shall be in effect for 120 days or until adoption of the final Rule, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 1. Secretary's Office

§103. Death Penalty

A. Purpose. To set forth procedures to be followed for the lethal injection of those individuals sentenced to death.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations and the Wardens of the Louisiana State Penitentiary and the Louisiana Correctional Institute for Women. The Secretary and the Wardens of the Louisiana State Penitentiary and the Louisiana Correctional Institute for Women are responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that the department shall carry out the death penalty in accordance with the provisions of the Louisiana Revised Statutes. All execution processes shall be performed in a professional, humane, sensitive and dignified manner. Executions shall be conducted at the Louisiana State Penitentiary. The warden of that facility is responsible for carrying out the death sentence on the date established by the sentencing court.

D. Incarceration Prior to Execution. Male offenders sentenced to death shall be incarcerated at the Louisiana State Penitentiary (LSP) at Angola, Louisiana. Female offenders sentenced to death shall be incarcerated at the Louisiana Correctional Institute for Women (LCIW) at St. Gabriel, Louisiana. Until the time for execution, the warden shall incarcerate the offender in a manner affording maximum protection to the general public, the employees of the department, and the security of the institution. Female offenders shall be transported to the Louisiana State Penitentiary for execution as directed by the secretary.

E. Mental Competency. Pursuant to the provisions of R.S. 15:567.1, a person who is not competent to proceed to execution may not be executed. A person is not competent to proceed to execution when he lacks the competence to understand that he is to be executed, and the reason he is to suffer that penalty. Any person sentenced to death may raise the issue of his mental incompetence to proceed to execution by filing an appropriate petition in the sentencing court. A person acting as petitioner's "next friend" or the Secretary of the Department of Public Safety and Corrections may also file the petition. The petition shall contain the information enumerated in R.S. 15:567.1(C). The sentencing court shall then determine the offender's mental competency in accordance with R.S. 15:567.1.

F. Death Warrant. Upon receipt of a death warrant, the secretary shall send written notification including a copy of the warrant to the following:

1. the warden at LSP;
2. the warden at LCIW (if appropriate);
3. the condemned offender, through the appropriate warden's office;
4. the governor, through the governor's executive counsel shall be mailed the certified copy of the warrant, return receipt requested, and the return receipt filed in the condemned offender's record; and
5. the clerk of each court of appeal.

G. Communications. The secretary shall establish a communication system between the governor's office and the LSP command center.

1. Primary communications shall be via a telephone line opened directly to the LSP command center from the execution chamber. This line shall be tested one hour prior to the scheduled execution. Other than testing, this line shall remain open.

2. Secondary communication shall be via cellular telephone.

3. In the event that both the primary and secondary communications are inoperable, the execution shall be delayed until communications are established.

H. Media Access

1. The media may contact the warden's office to request interviews. If the warden, condemned offender, and attorney (if represented by counsel) consent, the interview shall be scheduled for a time convenient to the institution.

2. Should the demand for interviews be great, the warden may set a day and time for all interviews and may specify whether the interviews shall be conducted individually or in "press conference" fashion.

I. Visits

1. Prior to the scheduled execution, the warden may approve special visits for the condemned offender.

2. The condemned offender shall not be required to visit with non-staff visitors that the condemned offender does not wish to see.

J. Pre-Execution Activities

1. The warden shall select an appropriate area to serve as a press room.

2. Approximately 30 calendar days prior to the scheduled execution date, the LSP execution team shall begin conducting training sessions no less than once per week until the scheduled date of the execution.

3. Approximately 14 calendar days prior to the scheduled execution date:

a. The secretary or designee shall give either written or verbal notice (followed by written notice placed in the United States mail within five days thereafter) of the date and time of the execution to the victim's parents, or guardian, spouse and any adult children who have indicated that they desire such notice. The named parties shall be given the option of attending the execution. Within three days of receipt of the notification, the named parties shall notify, either verbally or in writing, the secretary's office of their intention to attend as witness.

b. The warden at LSP shall have the condemned offender complete the requests for clergy witness, instructions for disposal of property and funeral arrangements. All such requests shall be signed in the presence of a notary.

4. Approximately 10 calendar days prior to the scheduled execution date:

a. The warden at LSP shall notify the following individuals/agencies of the date and time of the execution:

- i. Louisiana State Police;
- ii. West Feliciana Parish Sheriff;
- iii. West Feliciana Parish Coroner;
- iv. the condemned offender's clergy representative regarding the condemned offender's desire for the clergy representative to witness the execution.

b. The secretary shall select media representatives in accordance with Paragraph L.2. of this regulation and notify the warden of LSP in writing of the names of those selected.

5. Approximately seven calendar days prior to the scheduled execution date, the secretary shall notify the warden of LSP of the names of witnesses selected in accordance with R.S. 15:570-571.

6. Approximately seven calendar days prior to the scheduled execution date the warden at LSP shall order that the condemned offender be constantly monitored. A log entry must be made every 15 minutes that shall include, but not be limited to, movement, mood changes, meals served, showers, telephone calls, etc.

7. In the five calendar days prior to the execution, access to the execution room shall be restricted in accordance with institutional policy.

8. Approximately 12 to 24 hours prior to the scheduled execution:

a. The condemned offender shall be transferred from death row and housed in the execution building. The 15 minute log shall continue to be maintained.

b. The warden at LSP shall establish a line of communication with the secretary's office for notice of case status and/or other significant legal changes.

9. The following events shall take place upon the condemned offender's arrival at the execution building.

a. The execution building shall be restricted. Only the following shall be permitted access:

- i. secretary and/or designee(s);
- ii. warden;
- iii. deputy wardens;
- iv. chaplain;
- v. physician;
- vi. chief of security;
- vii. maintenance superintendent;
- viii. any other person deemed necessary by the warden.

b. The deputy warden/security and/or chief of security at LSP shall assign security personnel to staff entrances and checkpoints.

c. The deputy warden/security at LSP shall ensure that the condemned offender's property is inventoried in front of the condemned offender. Pursuant to Subparagraph

J.3.b. of this regulation, the condemned offender shall have previously specified who is to receive their personal effects.

d. The condemned offender shall be allowed visits with family, friends and/or private clergy, as approved by the warden at LSP. Visits will normally terminate by 3 p.m. on the day of the execution, except visits with a priest, minister, religious advisor or attorney which will terminate at the discretion of the warden at LSP or his designee.

e. All communications equipment shall be tested, including primary and secondary communication with the secretary and governor's offices.

f. The warden at LSP shall receive updates from security personnel on crowd control, demonstrations, etc., as needed.

g. The deputy warden/security and/or chief of security at LSP shall brief the warden at LSP on the tension level within the prison population, as needed.

h. The warden at LSP shall advise the secretary of any unusual activity.

K. Time and Place. The execution shall take place at the Louisiana State Penitentiary between the hours of 6 p.m. and 9 p.m. [R.S. 15:570(C)]

L. Witnesses. All witnesses shall be over 18 years of age and all witnesses shall agree to sign the report of execution (R.S. 15:570-571).

1. The execution shall take place in the presence of the following witnesses:

- a. the warden of the Louisiana State Penitentiary or designee;
- b. the coroner of West Feliciana Parish or deputy;
- c. a physician chosen by the warden;
- d. a competent person/s selected by the warden to administer the lethal injection; and
- e. a priest, minister, or religious advisor, if the offender so requests.

2. Not less than five nor more than seven other witnesses are required by law to be present. [R.S. 15:570(A)] These witnesses shall be selected as follows.

a.i. Three witnesses shall be members of the news media selected by the secretary from the following categories:

- (a) a representative from the associated press;
- (b) a representative selected from the media persons requesting to be present from the parish where the crime was committed; and
- (c) a representative selected from all other media persons requesting to be present.

ii. These witnesses must agree to act as pool reporters for the remainder of the media present and meet with all media representatives immediately following the execution.

b. Up to two witnesses may be victim relationship witnesses [R.S. 15:570(D)]. If more than two victim relationship witnesses desire to attend the execution, the secretary is authorized to select from the interested parties the two victim relationship witnesses who shall be authorized to attend. In the case of multiple victims' families, the secretary shall determine the number of witnesses, subject to availability of appropriate physical space.

c. The remaining witnesses shall be selected by the secretary.

3. All persons selected as witnesses shall sign a copy of the agreement by witness to execution prior to being transported to the execution room.

M. Execution Procedures

1. The execution shall be conducted in accordance with established procedures.

2. No cameras or recording devices, either audio or video, shall be permitted in the execution room.

3. The identity of the person/s specified in Subparagraph L.1.d. who participates in an execution either directly or indirectly, shall remain strictly confidential and shall not be subject to public disclosure in any manner whatsoever (R.S. 15:570.E-F).

4. The witnesses shall enter the witness room where they will receive a copy of the condemned offender's written last statement, if a written statement is issued.

5. The condemned offender shall then be taken to the lethal injection room by the escorting officers. Once in the room, the condemned offender shall be afforded the opportunity to make a last verbal statement if he so desires. He shall then be assisted onto the lethal injection table and properly secured to the table by the officers. Once the officers exit the room, the warden shall close the curtain to the witness room and signal the I.V. technician(s) to enter. The I.V. technician(s) shall appropriately prepare the condemned offender for execution and exit the room. The warden shall re-open the witness room curtain.

6. The person/s designated by the warden and at the warden's direction, shall then administer, by intravenous injection, the appropriate substances in a lethal quantity into the body of the condemned offender until he is deceased.

7. No employee, including employee witnesses to the execution, except the secretary or the warden or their designees, shall communicate with the press regarding any aspect of the execution except as required by law.

N. Post Execution

1. At the conclusion of the execution, the coroner or his deputy shall pronounce the condemned offender dead.

2. The warden shall advise the secretary that the coroner has pronounced the condemned offender dead.

3. The secretary shall advise the governor or designee that the execution has been carried out.

4. The witnesses shall be escorted from the witness area.

5. The body of the condemned shall be removed from the execution chamber.

6. Disposition of the body shall be in accordance with arrangements made prior to the execution at the condemned offender's request.

7. The warden shall make a written report reciting the manner and date of the execution which he and all of the witnesses shall sign. The report shall be filed with the clerk of court in the parish where the sentence was originally imposed. (R.S. 15:571)

O. Debriefing

1. The warden at LSP shall ensure that critical incident debriefings are available for the execution team and staff participants.

2. The LSP religious services coordinator and/or LSP mental health staff shall be available for debriefing for the family of the condemned offender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary, LR 6:10 (January 1980), amended LR 7:177 (April 1981), amended by the Department of Public Safety and Corrections, Corrections Services, LR 17:202 (February 1991), LR 18:77 (January 1992), LR 24:342 (February 1998), LR 25:2410 (December 1999), LR 28:2552 (December 2002), LR 29:2847 (December 2003), LR 31:1600 (July 2005), LR 31:2032 (August 2005), LR 32:2270 (December 2006), LR 36:

James M. Le Blanc
Secretary

0911#097

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Corrections Services

Louisiana Risk Review Panels
(LAC 22:I.107)

In accordance with the provisions of R.S. 49:953, the Department of Public Safety and Corrections, Corrections Services, hereby determines that adoption of an Emergency Rule for implementation of the Louisiana Risk Review Panels is necessary and that for the following reasons failure to adopt the Rule on an emergency basis will result in imminent peril to the public health, safety and welfare.

Act No. 403 of the 2001 Regular Session of the Louisiana Legislature at R.S. 15:574.22 created the Louisiana Risk Review Panel within the Department of Public Safety and Corrections. The Act specified the composition of the panel(s), call of meetings, powers and duties with regard to evaluation of the risk to society of release of incarcerated individuals.

Act No. 45 of the 2006 Regular Session declared that the provisions of Act No. 403 provided for more lenient provisions for certain enumerated crimes and that these penalty provisions were to be applied prospectively. Act No. 45 also provided that the revisions were to be applied retroactively and applied to any crime committed subject to the revised penalties, thus increasing the pool of potential risk review applicants.

Act No. 103 of the 2009 Regular Session also added additional crimes to further increase the pool of potential applicants.

In order for the Risk Review Panel to meet its statutory obligation to properly review each applicant for consideration relative to his risk of danger to society if released and in order to assist the department in meeting revised funding schedules, it is imperative that the panel(s) be operational as statutorily mandated as soon as possible.

Delays in the implementation of the Risk Review Panel will greatly impede the ability of the department to meet the stringent fiscal goals established by the legislature for this

fiscal year. The inability to immediately process applications and make the requisite recommendations to the Boards of Parole and Pardon may result in significant fiscal problems that will negatively impact programs and conditions of confinement.

For the foregoing reasons, the Department of Public Safety and Corrections, Corrections Services, has determined that the adoption of the following Emergency Rule, effective November 10, 2009, in accordance with R.S. 49:953(B). This Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule, whichever occurs first.

Title 22
CORRECTIONS, CRIMINAL JUSTICE
AND LAW ENFORCEMENT

Part I. Corrections

Chapter 1. Secretary's Office

§107. Louisiana Risk Review Panels

A. Purpose. To provide a consistent and reliable decision-making process for assessing certain non-violent offender's risk to commit another crime if released from incarceration. This process shall also be designed to enhance the motivation of offenders to participate in the types of programming that are available to reduce their risk and to prepare them to reenter the community successfully without further offense and victimization.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations, Assistant Secretary, Regional Wardens, Wardens, Director of Probation and Parole, Chairman of the Parole Board, Chairman of the Board of Pardons and the Sheriff or Administrator of local jail facilities. Each unit head is responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that the Louisiana Risk Review Panels shall assess the risk posed by certain non-violent offenders. The panels shall develop decisional guidelines to ensure that the criteria utilized to achieve the decisions, are clear, grounded in evidence-based practice and centered primarily around the goal of enhancing public safety and government efficiency.

D. Definitions

Offense—an infraction of any law, rule or code and, for the purpose of this regulation, includes both felonies and misdemeanors.

Regional Facility—a state correctional facility located within one of nine regions of the state, as designated by the secretary. Each warden of a regional facility shall be responsible for certain requirements pursuant to the provisions of this regulation for offenders housed in their state correctional facility, as well as DPS and C offenders housed in local jail facilities within their respective region.

E. Panel Composition and Guidelines

1. A total of three risk review panels are hereby created in the north, central and south regions of the state. An employee of the secretary's office shall serve as the headquarters risk review administrator for all panels. Three employees of the department (one for each region - north, central and south) shall serve as regional coordinator for an assigned panel. Each panel shall consist of five members as follows:

- a. the secretary or designee who shall be chairman;
- b. a psychologist (either licensed or working directly under the supervision of a licensed psychologist), who shall be authorized and approved by the secretary;
- c. the warden (or his deputy) at the state facility where the offender is housed or the warden (or his deputy) of the regional facility for offenders housed in local jail facilities;
- d. a retired judge with criminal law experience who shall be appointed by the governor; and
- e. a probation and parole officer with a minimum of 10 years experience, who shall be appointed by the governor.

2. A majority of the members of each panel shall constitute a quorum. All official actions of the panel shall require an affirmative vote of a majority of members present.

3. Each panel and/or panel member may serve in any region. Each panel shall convene quarterly, as scheduled by the department, or on the call of the chairman or upon the request of any three members.

4. Panel members, not employed by the department, may receive a per diem for each day in actual attendance at a hearing. The amount shall be fixed by the secretary in accordance with R.S. 15:574.22(D). All members shall receive travel reimbursement in accordance with established procedures.

5. Each chairman shall adhere to and ensure all meetings are conducted in accordance with the provisions of R.S. 42:4.1 et seq. (public policy for Open Meetings Law) and *Robert's Rules of Order*. Each regional coordinator shall serve as the official recording officer of the panel, keeping and distributing notices and decisions of panel meetings.

6. Recommendations submitted for a panel's consideration by individuals other than those employed by the department or the local jail facility where the offender is assigned shall be in writing and made part of the panel's review and hearing record.

F. Selection Criteria

NOTE: For the purpose of this regulation:

- The instant offense or offenses used to bill the offender as an HFC shall be considered in determining statutory eligibility. Prior offenses shall only be considered in the criminal history review;
- Offenders convicted of a crime of violence, whether it is the instant offense or a past offense, are not statutorily eligible for risk review consideration.

1. The following offenders shall not be eligible for review by the risk review panels:

- a. an offender convicted of a crime defined or enumerated as a crime of violence in R.S. 14:2(B);
- b. an offender convicted of a sex offense as defined in R.S. 15:540 et seq. when the victim was under the age of 18 at the time of the commission of the offense.
- c. an offender convicted of a violation of the Uniform Controlled Dangerous Substances Law, except that the following offenders shall be evaluated by the panels:
 - i. an offender convicted of possession as defined in R.S. 40:966 (C), 967(C), 968(C), or 970(C);
 - ii. an offender convicted of distribution or possession with the intent to distribute cocaine where the offense of conviction involved less than 28 grams of cocaine;
 - iii. an offender convicted of distribution or possession with the intent to distribute marijuana where the

offense of conviction involved less than one pound of marijuana;

iv. an offender sentenced under any other violation of the Uniform Controlled Dangerous Substances Law who has served the mandatory minimum sentence in actual custody for the offense or one-half of the sentence imposed whichever is less;

v. An offender sentenced to a term of life imprisonment for a violation of the Uniform Controlled Dangerous Substances Law who has served at least seven years of the term of imprisonment in actual custody. However, this provision shall not apply to:

(a). any offender convicted of a sex offense as provided in section F.1.b.;

(b). any offender sentenced as a habitual offender under R.S. 15:529.1 where one or more of the crimes for which the offender was convicted and sentenced under R.S. 15:529.1 was a crime of violence defined or enumerated in R.S. 14:2(B) as provided for in section F.1.d.

d. An offender sentenced as a habitual offender under R.S. 15:529.1 where one or more of the crimes for which the offender was convicted and sentenced under R.S. 15:529.1 was a crime of violence defined or enumerated in R.S. 14:2(B).

2. Pursuant to this regulation, an offender's application may also be denied by the panel for one or any combination of the following reasons:

a. participating in or recommended for participation in pre-release programming, including IMPACT and/or a work release program;

b. 365 days or less until earliest release date;

c. felony detainer(s) or open warrant(s);

d. poor conduct and/or disciplinary record, including, but not limited to, habitual and compulsive violent behavior, consistent signs of bad work habits, lack of cooperation or good faith effort and/or other undesirable behavior;

e. maximum custody status, except those offenders assigned to maximum custody based solely upon classification criteria other than disciplinary reasons;

f. low level of program activity and/or completion when compared to program opportunity and availability;

g. extensive habitual and/or violent criminal history;

h. extensive supervision revocation history;

i. history of mental illness and/or condition that would lead to the conclusion that the individual is a danger to society;

j. communicable or contagious disease and/or condition for which the offender has not been non-receptive or non-compliant with prescribed or recommended medical treatment;

k. possession or use of an illegal or controlled dangerous substance during the offender's current term of incarceration;

l. poor personal and/or victim restitution payment history;

m. pursuant to R.S. 15:308, certain offenders are entitled to apply to the risk review panel; however, such offenders must meet the eligibility requirements under R.S. 15:1574.22 (G).

G. Application Procedures

1. Offenders must complete the application for risk review. An offender's request for review submitted in any format other than the official application form may be returned to the offender without action.

2. Offenders assigned to a state correctional facility shall submit their application for risk review to the warden of the facility where they are housed. Offenders assigned to a local jail facility shall submit their application for risk review to the warden of the regional facility within which the local jail facility is located.

3. The application shall be reviewed by a classification manager or designee of the receiving state facility to determine whether the offender meets the minimum statutory eligibility and suitability requirements. If the classification manager determines the offender is eligible for panel consideration, the classification manager or designee shall forward the completed application packet, including the documents and information specified below, and a written summary recommendation to the appropriate regional coordinator:

a. presentence, post sentence and pre-parole report, if available;

b. bill of information;

c. sentencing minutes;

d. master prison record;

e. reentry accountability plan (ReAP);

f. Louisiana Risk Need Assessment II (LARNA II);

g. classification/security summary;

h. institutional or jail progress report(s)*;

i. conduct record;

j. medical, mental health and psychological assessments and summary*;

k. educational and vocational assessment(s), participation and completion summary*;

l. anticipated release plans and other resources available to the offender in the event of release. If the panel makes a recommendation to the pardon or parole boards, the offender must complete all recommended release programming and submit approved release plans, including residence plans and other available resources, prior to actual release.

*The unit head or designee shall ensure this information is entered into lotus notes on the risk review screening form and into the department's CAJUN database.

4. If the offender is found to be statutorily eligible, but not suitable for one of the reasons listed in section F.2., the classification manager or designee shall forward the application, along with the documentation and information required in Paragraph G.3. and a written summary of the reason(s) for the determination, to the regional coordinator for final disposition by the panel.

5. If the offender is found to not be statutorily eligible for risk review panel consideration, the classification manager shall forward the application to the regional coordinator noting the reason for the offender's statutory ineligibility.

6. The regional coordinator shall create an official record upon receipt of a risk review application packet or ineligibility notice by entering each application into the CAJUN database and assigning the application a case

number. For ineligible applications, the regional coordinator shall notify the offender utilizing the Notice of Decision and provide additional instructions for reapplication, if necessary.

7. A comprehensive analysis of each eligible offender's application packet shall be conducted by the regional coordinator, confirming the offender is statutorily, technically and subjectively eligible for review by a risk review panel. Offenders shall then be placed on the appropriate docket in accordance with current panel guidelines.

8. Each regional coordinator shall maintain a complete and accurate record of all applications received, including disposition and reasons, etc. utilizing the department's CAJUN database.

H. Panel Review

1. The panel shall review all assimilated and/or pertinent information during deliberations and assess the offender's risk to commit another crime if released from incarceration. At a minimum, this information shall include the following:

- a. presentence report, if available, master prison records, medical and psychological records;
- b. risk assessment score of the Louisiana Risk Need Assessment II (LARNA II);
- c. recommendations and/or comments submitted by the sentencing judge, district and/or assistant district attorney, probation and parole staff, victim and/or victim's family and the offender;
- d. age of the offender (to include consideration of chronological age and length of confinement, which may reduce the offender's risk of committing another crime);
- e. current medical condition (which may reduce the offender's risk of committing another crime);
- f. damage or injury that resulted by the crime committed;
- g. resources available to the offender if released (e.g., housing, job, educational or skill level, family or other support); and
- h. extent to which the sentence for the instant offense exceeded the minimum sentence in effect at the time of sentencing.

2. The relevance of any witness testimony shall be determined solely at the discretion of the risk review panel.

3. At the discretion of the panel, hearings may be conducted by live interview, record review, telephone or video conference or other form of meeting technology.

4. All members of the panel shall vote individually to recommend or deny (with or without instructions) the offender to the pardon board or parole board for release consideration. The panel may also include their recommendation(s) regarding conditions of an offender's release, if granted by a board. Any recommendation of the panel shall not be binding on the part of either board.

5. The panel may also recommend new or additional program participation and/or require completion of current programming, such as IMPACT, substance abuse treatment, educational or vocational training, etc.

6. The chairman shall notify each offender in writing of the panel's decision with instructions, if applicable. All

decisions shall be compiled and disseminated by the regional coordinator.

a. A copy of all decisions shall be sent to the warden, sheriff or jail administrator and the headquarters risk review administrator. A copy shall also be maintained in the offender's master prison record. Unless otherwise directed by the panel, offenders may only submit an application for risk evaluation once in a 12-month period and acceptance shall be at the discretion of the panel.

7. The decision of a risk review panel is final and shall not be appealed through the administrative remedy procedure.

I. Victim Notification. The regional coordinator shall ensure registered victims receive written notification at the time the offender is docketed for review by the panel and a copy of the notification shall be maintained in the offender's master prison record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 28:94 (January 2002), amended LR 29:2847 (December 2003), LR 32:1069 (June 2006), repromulgated LR 32:1247 (July 2006), LR 36:

James M. Le Blanc
Secretary

0911#098

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

CCAP Military Child Care Providers
(LAC 67:III.5107, 5109, and 5113)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt LAC 67:III.5107, 5109, 5113, Child Care Assistance Program. This Rule shall remain in effect for a period of 120 days and is effective October 30, 2009.

The department has adopted the following Emergency Rule, finding that an imminent threat to the public health, safety, and welfare exists. Men and women serving in the armed forces of the United States and facing deployment to war zones or combat-support duties are frequently denied access to child care assistance benefits for their minor children when their children are cared for by centers licensed by the Department of Defense.

It is essential to our national security that the effectiveness of our military troops not be impaired by an inability to afford quality child care for their minor children on the military base while on active duty. This Emergency Rule extends participation to child care facilities on United States military bases licensed by and through the U.S. Department of Defense. Adoption of this Emergency Rule will remove the disparity in quality of child care by assisting low-income members of the armed forces in paying for care for their children at high-quality child care facilities located on military bases.

**Title 67
SOCIAL SERVICES**

Part III. Office of Family Support

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter B. Child Care Providers

§5107. Child Care Provider

A. The head of household, or parent/caretaker relative in the case of a STEP participant, shall be free to select a child care provider of his/her choice including center-based child care (licensed Class A centers, and licensed Class A Head Start centers which provide before-and-after school care and/or summer programs, and child care centers licensed by the Department of Defense), a registered family child day care home (FCDCH) provider, in-home child care, and public and non-public BESE-regulated schools which operate kindergarten, pre-kindergarten, and/or before and after school care programs.

B. A licensed Class A center, licensed Class A Head Start center, or center licensed by the Department of Defense must be active in the Child Care Assistance Program (CCAP) Provider Directory, complete and sign a Class A or Department of Defense provider agreement, as appropriate, and provide complete and accurate documentation and information required for direct deposit before payments can be made to that facility.

C. - G1.c. ...

d. a Class A or Department of Defense center's license is revoked or not renewed.

e. - .g. ...

h. a Class A, Department of Defense, or school child care provider fails to submit complete and accurate documentation and information required for Direct Deposit.

G.2. - I.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189(February 2003), LR 30:496 (March 2004), LR 30:1484 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:

§5109. Payment

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

b. the state maximum rate for authorized services effective January 1, 2007, as indicated below.

Provider Type	Regular Care	Regular Care for Infants/Toddlers (under age 3)	Special Needs Care Incentive	Special Needs Care Incentive for Infants/Toddlers (under age 3)
Class A	\$17.50	\$18.50	\$21.65	\$22.65
Class E	\$15.00	\$16.00	\$18.50	\$19.50
Class R	\$15.00	\$16.00	\$18.50	\$19.50
Class U	\$14.50	\$15.50	\$17.90	\$18.90
Class M	\$17.50	\$18.50	\$21.65	\$22.65

2. Payments to providers on behalf of FITAP recipients will be the lesser of:

a. the provider's actual charge multiplied by authorized service days or authorized service hours, or

b. the state maximum rate for authorized services effective January 1, 2007, as indicated below.

Provider Type	Regular Care	Regular Care for Infants/Toddlers (under age 3)	Special Needs Care Incentive	Special Needs Care Incentive for Infants/Toddlers (under age 3)
Class A	\$17.50	\$18.50	\$21.65	\$22.65
Class E	\$15.00	\$16.00	\$18.50	\$19.50
Class R	\$15.00	\$16.00	\$18.50	\$19.50
Class U	\$14.50	\$15.50	\$17.90	\$18.90
Class M	\$17.50	\$18.50	\$21.65	\$22.65

B.3. - E. ...

F. Electronic disbursement of child care payments shall be mandatory for all types of CCAP providers. Electronic disbursement of child care payments includes direct deposit to the CCAP provider's bank account (checking or savings) or payments to a stored value card account for the CCAP provider. It is mandatory for Class A, Class M, and school child care providers to utilize direct deposit to receive their CCAP payments. The fees associated with the use of a stored

value card are subject to the conditions of that financial institution.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445(December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July

2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:

§5113. Disqualification Periods for CCAP Providers

A. A child care provider shall be disqualified from receiving CCAP payments if the agency determines that certain acts or violations have been committed by that provider. CCAP disqualifications shall apply as follows.

1. A criminal background check (CBC) shows that a provider has been convicted of or pled no contest to any defense in another jurisdiction whose elements would constitute an enumerated offense under in R.S.15:587.1(C) if committed within Louisiana, shall result in permanent disqualification. If a CBC shows that a person living in or working in an FCDCH or a person working in a Class A, Class M, or Class E center shows the person has been convicted of or pled no contest to any offense enumerated in R.S.15:587.1(C), or has been convicted of or pled no contest to any offense in another jurisdiction whose elements would constitute an enumerated offense under R.S.15:587.1(C) if committed within Louisiana, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class M, or Class E center. For purposes of this section a conviction under La C.Cr.P. Artts. 893 or 894, or equivalent provisions of another jurisdiction, shall constitute a conviction.

2. A Category 1 validated complaint of child abuse or neglect on the provider shall result in permanent disqualification. If the Category 1 validated complaint is for a person living in or working in an FCDCH or for a person working in a Class A, or Class M, or Class E center, the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class M, or Class E center. The following types of validated complaints of child abuse or neglect are considered to be Category 1 complaints: bone fracture, factitious disorder by proxy/Munchausen by proxy syndrome, poisoning or noxious substance ingestion, suffocation, whiplash/shaken infant syndrome, HIV/AIDS and hepatitis, prostitution, sexual intercourse (vaginal or anal), failure to thrive (non-organic), central nervous system damage/brain damage/skull fracture, internal injury, subdural hematoma, torture, wounds, oral sex, sexual exploitation/pornography, sexually transmitted disease, malnutrition/starvation, death/abuse, death/neglect, perpetrators who have an adjudication of a child in need of care, perpetrators with a voluntary or involuntary termination of parental rights (TPR) judgment, sexual enticement, simulated intercourse, abandonment, burns, eye injury, minor head/facial injuries, tying or confinement, passive abuse, exploitation, sexual manipulation or fondling, emotional maltreatment, bruises/cuts/welts/scratches, dislocations or sprains, human bites, mouth/dental trauma, medical neglect, drug/alcohol abuse, dependency, and lack of supervision as described in §5113.A.4. These types of validated complaints of child abuse or neglect are defined by the Office of Community Services.

3. A Category 2 validated complaint of child abuse or neglect on the provider shall result in the corrective action or disqualification periods described below. If the Category 2 validated complaint is for a person living in or working in an FCDCH or working in a Class A, Class M, or Class E center,

the provider shall be disqualified until that person is no longer living in or working in the FCDCH or working in the Class A, Class M, or Class E center, or until the corrective action described below is met or the disqualification period described below ends, whichever is sooner. The following types of validated complaints of child abuse or neglect are considered to be Category 2 complaints: inadequate clothing, inadequate food, inadequate shelter, and lack of supervision as described in §5113A.4. These types of validated complaints of child abuse or neglect are defined by the Office of Community Services. The corrective action or disqualification periods for Category 2 validated complaints are as follows:

3.a. - 6c. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:2208 (October 2008), amended LR 36:

Kristy Nichols
Secretary

0911#043

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Child Daycare Services and Child
Care Quality Rating System
(LAC 67:III.5121, 7302, 7303, 7305,
7355, 7357, 7359, and 7361)

The Department of Social Services (DSS), Office of Family Support (OFS), has exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) to amend the Louisiana Administrative Code (LAC) 67:III.Subpart 12, Child Care Assistance, and LAC 67:III.Subpart 21, Child Care Licensing, and to become effective upon the signature of the Secretary to comply with Acts 194, 351 and 343 of the 2009 Regular Session of the Louisiana Legislature.

Act 194 of the 2009 Regular Session transferred sole authority over rulemaking and decisions to deny or revoke a child care facility license from external committees to the Department of Social Services, makes uniform the requirements of licensure for all types of facilities, and shortens the time during which a center may remain open following revocation. It also requires creation of an Advisory Council on Child Care to advise the Department on rule-making for child day care facilities. Act 343 requires the department to provide current information on influenza, including known risks of the various strains of the disease and the risks and benefits of immunization, to parents of children in child care facilities, including child residential care facilities. Act 351 requires child day care facilities to make available to parents information on violations of the child care minimum standards at those facilities.

LAC 67.III.Chapter 51, Subchapters A, B and D will remain intact without amendment; Subchapter C will be amended and re-enacted to clarify that a quality star rating will be revoked if the facility's license is revoked. LAC 67

Chapter 73 will be amended and reenacted to create the Advisory Council on Child Care and Early Education to comply with Act 194 and to remove references to the former Class A and Class B Committees abolished by that Act. It will also be amended to include notification to parents about requirements regarding licensing surveys and influenza outbreaks mandated by Acts 351 and 343 of the 2009 Regular Session.

This Rule will remain in effect 120 days and is effective October 26, 2009.

Title 67

Social Services

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

Subchapter C. Child Care Quality Rating System

§5121. Participation

A. - C. ...

D. Centers that have achieved a Star Rating will have their rating revoked if the child care license is revoked.

E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2788 (December 2007), amended LR 34:2412 (November 2008), amended by the Department of Social Services, Office of Family Support, LR 36:

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter A. Licensing Class "A" Regulations for Child Care Centers

§7302. Authority

A. Legislative Provisions. The State of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child care centers. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq., making mandatory the licensing of all child care facilities and child placing agencies, including child care centers. Under R.S. 46:1403, a child *day care center* is defined as a place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least 12 1/2 hours in a continuous 7-day week. Additionally, *related or relative* is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

B. - C.3. ...

D. The Louisiana Advisory Council on Child Care and Early Education

1. The Louisiana Advisory Council on Child Care and Early Education is hereby created in accordance with R.S. 46:1414, as amended by Acts 2009, No. 194, to provide input and guidance to the Department of Social Services on matters pertaining to rules, regulations and standards for licensure of Class A and Class B day care centers as defined in R.S. 46:1403(A)(4).

2. The Council shall be composed of 12 voting members, appointed by the Secretary of the Department of

Social Services and 9 non-voting ex-officio members. The membership shall consist of:

a. one parent of a child currently enrolled in a licensed child care facility;

b. three owners or directors of licensed child care facilities in Louisiana, and one faith based child care provider;

c. two professionals and/or faculty of child development and/or early childhood education programs at community technical colleges or universities located in Louisiana;

d. one representative from each of the following advocacy organizations: the Louisiana Head Start Association, the Louisiana Partnership for Children and Families, the Louisiana Association for the Education of Young Children, the Child Care Association of Louisiana, and the Louisiana Early Childhood Association of Louisiana; and

e. nine non-voting ex-officio members consisting of one representative of each of the following offices or agencies: the Department of Education Pre-Kindergarten Program, the Department of Education Child and Adult Care Food Program, the Louisiana Office of State Fire Marshal, the Department of Health and Hospitals Office of Sanitarian Services, the Louisiana Workforce Commission, the Louisiana State Police Bureau of Criminal Identification, and three representatives from the Department of Social Services.

3. Members will be appointed to serve an initial two-year term on the Council and may be eligible to be reappointed to serve an additional two-year term.

4. A member shall be automatically removed from the advisory council if he/she has two or more unexcused absences during any 12-month period. An absence is excused for purposes of this Section when the cause is one which a reasonably-prudent person would deem to take precedence over fulfillment over a solemn public duty; or, if the absence is known in advance to be probable, if the member notifies the chairperson of his/her expected absence not less than 24 hours in advance of the scheduled meeting.

5. A quorum shall consist of a simple majority of the active voting members.

6. Whenever a vacancy occurs in any Council seat, whether by death, resignation, or automatic removal, such vacant seat shall no longer be counted as an active voting member in determining a quorum until a successor has been appointed by the secretary to fill the unexpired term.

7. Officers of the council shall include a chair, vice-chair and secretary.

8. All meetings shall be conducted in accordance with the state's Open Meetings law. Procedural matters shall be conducted in accordance with the latest edition of Robert's Rules of Order.

9. Members shall serve without compensation or reimbursement.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau

of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1107 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2755 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7303. Procedures

A. - C.2. ...

C.3. If the survey reveals that the provider is not meeting minimum requirements, a decision may be made by the department for adverse action.

D. - E.1. ...

2. A provider may appeal the revocation or non-renewal of a license by submitting a written request to appeal the decision along with a copy of the notice within 15 days of receipt of the notice of revocation or non-renewal. In the case of a denial of an initial application for a license, a provider may appeal the denial by submitting a written request to appeal the decision within 30 days of receipt of the notice of denial of application. A request for appeal should include the specific reasons the decision is believed to be erroneous and/or the specific reasons the decision is believed to be incorrect, and mailed to: Department of Social Services, Bureau of Appeals, P. O. Box 2944, Baton Rouge, LA 70821-9118.

E.3. - F.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7305. General Requirements

A. - K. ...

L. Licensing Surveys; Notice Requirements. In accordance with Act 351 of the 2009 Regular Legislative Session, providers shall prominently post information advising parents or guardians that findings from licensing surveys are available online which includes the current web address and that findings from licensing surveys are also available upon written request to the Department of Social Services.

M. Influenza Notice to Parents. In accordance with Act 343 of the 2009 Regular Legislative Session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1112 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2760 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter B. Licensing Class "B" Regulations for Child Care Centers

§7355. Authority

A. The Louisiana Advisory Council on Child Care and Early Education

1. The Louisiana Advisory Council on Child Care and Early Education is hereby created in accordance with R.S. 46:1414, as amended by Acts 2009, No. 194, to provide input and guidance to the Department of Social Services on matters pertaining to rules, regulations and standards for licensure of Class A and Class B day care centers as defined in R.S. 46:1403(A)(4).

2. The Council shall be composed of 12 voting members appointed by the Secretary of the Department of Social Services and 9 non-voting ex-officio members. The membership shall consist of:

a. one parent of a child currently enrolled in a licensed child care facility;

b. three owners or directors of licensed child care facilities in Louisiana, and one faith-based child care provider;

c. two professionals and/or faculty of child development and/or early childhood education programs at community technical colleges or universities located in Louisiana;

d. one representative from each of the following advocacy organizations: the Louisiana Head Start Association, the Louisiana Partnership for Children and Families, the Louisiana Association for the Education of Young Children, the Child Care Association of Louisiana, and the Louisiana Early Childhood Association of Louisiana; and

e. nine non-voting ex-officio members consisting of one representative of each of the following offices or agencies: the Department of Education Pre-Kindergarten Program, the Department of Education Child and Adult Care Food Program, the Louisiana Office of State Fire Marshal, the Department of Health and Hospitals Office of Sanitarian Services, the Louisiana Workforce Commission, the Louisiana State Police Bureau of Criminal Identification, and three representatives from the Department of Social Services.

3. Members will be appointed to serve an initial two-year term on the Council and may be eligible to be reappointed to serve an additional two-year term.

4. A member shall be automatically removed from the advisory council if he/she has two or more unexcused absences during any 12-month period. An absence is excused for purposes of this Section when the cause is one which a reasonably-prudent person would deem to take precedence over fulfillment over a solemn public duty; or, if

the absence is known in advance to be probable, if the member notifies the chairperson of his/her expected absence not less than 24 hours in advance of the scheduled meeting.

5. A quorum shall consist of a simple majority of the active voting members.

6. Whenever a vacancy occurs in any Council seat, whether by death, resignation, or automatic removal, such vacant seat shall no longer be counted as an active voting member in determining a quorum until a successor has been appointed by the secretary to fill the unexpired term.

7. Officers of the council shall include a chair, vice-chair and secretary.

8. All meetings shall be conducted in accordance with the state's Open Meetings law. Procedural matters shall be conducted in accordance with the latest edition of Robert's Rules of Order.

9. Members shall serve without compensation or reimbursement.

B. Penalties. The penalty for the operation of a center without a valid license is a fine of not less than \$75 and not more than \$250 for each day of operation without a license.

C. Injunctions. If any child care facility operates without a valid license issued by the department, the department may file suit in the district court in the parish in which the facility is located for injunctive relief. This injunctive order may include a temporary restraining order to restrain the institution, society, agency, corporation, person or persons, or any other group operating the child care facility from continuing the violation.

D. Inspections. It shall be the duty of the Department of Social Services, through its duly authorized agents, to inspect at regular intervals not to exceed one year or as deemed necessary by the department and without previous notice all child care facilities and child-placing agencies subject to the provisions of the Chapter (R.S. 46:1401 et seq.). The facility shall be open to inspection at all times during working hours or when children are in care by the parents or legal guardians of children in care and by all authorized inspection personnel.

E. Waivers. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical. These standards may be waived only if the health and well being of the staff and/or the children are not placed in danger.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1635 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7357. Definitions

A. The following are definitions of terms used in these minimum standards.

Bureau—the Bureau of Licensing of the Louisiana Department of Social Services.

Child Care Center—any place or facility operated by any institution, society, agency, corporation, person or

persons, or any other group for the purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least twelve and one-half hours in a continuous seven-day week. *Related or relative* is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

Child Care Staff—an individual directly involved in the care and supervision of the children in the center.

Committee on Private Child Care—Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7359. Procedures

A. - F.10. ...

G. Appeal Procedure

1. A provider may appeal the revocation or non-renewal of a license by submitting a written request to appeal the decision along with a copy of the notice within 15 days of receipt of the notice of revocation or non-renewal. A prospective provider may appeal the denial of an initial application by submitting a written request to appeal the decision within 30 days of receipt of the notice of denial of application. A request for appeal shall include the specific reasons the provider believes the decision to be erroneous and/or the specific reasons the decision is believed to be incorrect, and mailed to: Department of Social Services, Bureau of Appeals, P. O. Box 2944, Baton Rouge, LA 70821-9118.

G.2. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2771 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

§7361. General Requirements

A. - J. ...

K. Licensing Surveys; Notice Requirements. In accordance with Act 351 of the 2009 Regular Legislative Session, providers shall prominently post information advising parents or guardians that findings from licensing surveys are available online which includes the current web address and that findings from licensing surveys are also available upon written request to the Department of Social Services.

L. Influenza Notice to Parents. In accordance with Act 343 of the 2009 Regular Legislative Session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza

and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1112 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2760 (December 2007), amended by the Department of Social Services, Office of Family Support, LR 36:

Kristy H. Nichols
Secretary

0911#003

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Delay of Oyster Season Opening

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) and R.S. 49:967(D), and under the authority of R.S. 56:433(B)1 which provides that the Wildlife and Fisheries Commission may designate what parts or portions of the natural reefs may be fished for oysters and it may suspend the fishing of oysters altogether from natural reefs not leased by it when such reefs are threatened with depletion as determined by the department, and a Resolution adopted by the Wildlife and Fisheries Commission on August 6, 2009 which authorized the Secretary of the Department of Wildlife and Fisheries to take emergency action if necessary to close areas based on oyster mortality and adverse impacts to oyster reefs and to delay the season in areas where significant spat catch has occurred with good probability of survival, the Secretary hereby declares:

The 2009/2010 oyster season in the following areas, which was scheduled to open at one-half hour before sunrise on Wednesday, October 28, 2009 will be delayed as indicated below. Biological sampling during the first two weeks of October 2009 has shown the occurrence of a successful spat set in these areas. These spat represent future oyster stocks and protecting them are in the best interest of the oyster resource; a resource which is currently well below the long-term average of historical stock size. Therefore the following areas will remain closed as indicated below:

1. That portion of the public oyster seed grounds in St. Bernard Parish north of a line of latitude 30 degrees 00 minutes 00.0 seconds N and east of a line of longitude 89

degrees 22 minutes 50.0 seconds W will remain closed until further notice.

2. The Sister Lake Public Oyster Seed Reservation in Terrebonne Parish will remain closed until one-half hour before sunrise on Friday, October 30, 2009. It will then open and remain open until one-half hour after sunset on November 12, 2009.

Robert J. Barham
Secretary

0911#002

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Elmer's Island Wildlife Refuge (LAC 76:III.337)

The Elmer's Island Wildlife Refuge was opened for public access on July 3, 2009. More than 800 people participated in fishing, crabbing, swimming and sun bathing during that holiday weekend. Since the refuge's opening it has been heavily used by the public, as it is commonly regarded as one of the premiere bank fishing locations in south central Louisiana. A recent attempt to clean up the refuge yielded in excess of 6,000 pounds of trash being removed.

Because of this heavy use, and in some instances misuse of the area, there is an urgent need to establish rules in order to protect the public health, safety and welfare. There is an immediate need to regulate the possession of glass containers, excessive vehicle speed and careless vehicle operations on the refuge and to enact and enforce other rules necessary for the health, safety and welfare of the visiting public. The absence of an existing Rule impairs the department's legal authority to enforce and protect the public health, safety and welfare. For these reasons, it is imperative that regulations be put in place immediately.

It is necessary for the Wildlife and Fisheries Commission to invoke the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B) to adopt this Rule. This Declaration of Emergency will become effective on November 5, 2009 and will supersede that Declaration of Emergency published in the October 20, 2009 *Louisiana Register*. It shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final Rule.

Title 76

WILDLIFE AND FISHERIES

Part III. State Game and Fish Preserves and Sanctuaries

Chapter 3. Particular Game and Fish Preserves, Wildlife Management Areas, Refuges and Conservation Areas

§337. Elmer's Island Wildlife Refuge

A. Visitor Regulations for Elmer's Island Wildlife Refuge

1. Use of the refuge will be permitted from 30 minutes before official sunrise to 30 minutes after official sunset. This includes any land access routes to the refuge. No person or vehicle shall remain on the Elmer's Island Wildlife Refuge or any land access routes during the period from 30 minutes after official sunset to thirty minutes before sunrise.

2. No person shall possess any glass bottles, glass drink containers or other glass products on Elmer's Island Wildlife Refuge.

3. The secretary of the department may restrict access to the refuge whenever circumstances exist such that restrictions are necessary to protect the Refuge or the public from harm. No person shall enter onto or be on the grounds of Elmer's Island Wildlife Refuge during a restricted access period; or alternatively shall do so only in accordance with restrictions set forth by the secretary.

4. No person shall discharge or fire any firearms including muzzleloaders, or bows and arrows or crossbows on Elmer's Island.

5. No person shall commercially fish, conduct any guiding service, hunt, pursue, kill, molest or intentionally disturb any type of wildlife on the refuge, except for the legal recreational harvest of living aquatic resources.

6. No person shall be in areas marked as restricted by signs posted by the department.

7. No person shall operate any vehicles in a restricted area. No person shall operate a vehicle in an unsafe or careless manner as to endanger life or property or at any speed in excess of 5 miles per hour.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:109, R.S. 56:109.2, R.S. 56:763 and R.S. 56:781 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 36:

Robert J. Samanie, III
Chairman

0911#055

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Greater Amberjack Commercial Season Closure

The commercial season for the harvest of greater amberjack in Louisiana state waters will close effective 12:01 a.m. on November 7, 2009. The secretary has been informed that the commercial season for greater amberjack in the federal waters of the Gulf of Mexico off the coast of Louisiana will close at 12:01 a.m. on November 7, 2009, and will remain closed until 12:01 a.m. January 1, 2010.

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department by the commission in its resolution of January 8, 2009 to modify opening and closing dates of 2009 commercial reef fish seasons in Louisiana state waters when he is informed by the Regional Director of NOAA Fisheries that the seasons have been closed in adjacent federal waters, and that NOAA Fisheries requests

that the season be modified in Louisiana state waters, the secretary hereby declares:

The commercial fisheries for greater amberjack in Louisiana waters will close at 12:01 a.m. on November 7, 2009, and remain closed until 12:01 a.m., January 1, 2010. Effective with this closure, no person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell greater amberjack whether within or without Louisiana waters. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing greater amberjack taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by NOAA Fisheries that the commercial greater amberjack season in Federal waters of the Gulf of Mexico will both close at 12:01 a.m. on November 7, 2009, and the season will remain closed until 12:01 a.m. January 1, 2010. Having compatible season regulations in state waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of the species in the long term.

Robert J. Barham
Secretary

0911#054

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Lake Darbonne Fishing Closure

Due to excessive high water from extraordinary rainfall in Union Parish, Lake Darbonne and its tributaries are experiencing flooding, and the surrounding houses and camps are vulnerable to wakes from boat traffic from fishing and boating activities. Therefore it is necessary to close this area to all fishing activities and ensure boat traffic proceeds without making any waves. In accordance with the provisions of R.S. 56:6.1 and R.S. 34:851.27, Lake Darbonne and its tributaries are hereby closed to any fishing, and effective with the closure, no person shall fish or possess fish or operate any watercraft in excess of bare steerage speed, the slowest speed the vessel can travel while allowing the minimum operator to maintain directional control of the vessel to produce the minimum water surface turbulence. There is hereby established a "No Wake" zone on Lake Darbonne and its tributaries. This Declaration of Emergency shall become effective October 16, 2009 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until rescinded by the Secretary.

Robert J. Barham
Secretary

0911#001

Rules

RULE

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Daily Risk Position Report (LAC 7:XXVII.123, 141 and 143)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3405, the Louisiana Agricultural Commodities Commission (commission), has amended regulations regarding the monthly submission of the daily risk position report by grain dealers.

The requirement of a monthly submission of a grain dealer's daily risk position report has become burdensome to the grain industry. The initial intention of the requirement for a grain dealer to submit a daily risk position report was to monitor a grain dealer's net worth position versus their risk position on a monthly basis. However, in order to achieve an accurate analysis, a grain dealer would have to keep a constant updated financial statement reflecting their net worth on a monthly basis rather than an annual basis. Maintaining a constant updated financial statement would be costly and burdensome on the grain dealer. Therefore, it has been determined by the commission that the requirement for the submission of the daily risk position report imposes an unnecessary hardship on the industry and should be repealed.

These rules are enabled by R.S. 3:3405 and 3:3419.

Title 7

AGRICULTURE AND ANIMALS

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

Chapter 1. Louisiana Agricultural Commodities Commission

§123. Requirements Applicable to All Grain Dealers

A. - I. ...

J. Each grain dealer shall adopt and post in a prominent place a policy for sampling and grading grain within 72 hours from the time the grain is delivered to the grain dealer.

K. No grain dealer license shall be issued unless the grain dealer staff includes a certified grain sampler and grader.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3411, R.S. 3:3413 and R.S. 3:3419.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Commodities Commission, LR 9:301 (May 1983), amended LR 10:75 (February 1984), LR 12:287 (May 1986), LR 35:2311 (November 2009).

§141. Records Required to be Maintained

A. - A.7. ...

8. settlement of distribution sheets;

9. weight sheets;

10. perpetual inventory record;

11. insurance file, including copies of monthly reports to carriers;

12. record of all assessments collected and remitted;

13. copies of all outstanding contracts;

14. copies of all outstanding notes and mortgages affecting the business;

15. a sample of each lot of grain which contains damage in excess of 7 1/2 percent shall be:

a. maintained for five days from the original grade date; and

b. maintained in separate containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405, R.S. 3:3414.3, and R.S. 3:3419.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998), LR 35:2311 (November 2009).

§143. Reports Required

A. ...

B. No later than the fifteenth day of each month each warehouse shall file a copy of his daily inventory report for the preceding month with the commission.

B.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3419.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:310 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1302 (October 1993), LR 35:2311 (November 2009)

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.

Mike Strain, D.V.M.
Commissioner

0911#060

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System
(LAC 28:LXXXIII.603, 611, 1601, 1603, 1901, 1903, 2101, 3101-3111, and 4909)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 111—The Louisiana School, District, and State Accountability System*: §603, Determining a Cohort for a Graduation Index, §611, Documenting a Graduation Index, §3101, Appeals/Waivers and Data Certification Processes, §3105, General Guidelines—Parent/School-Level Requests, §3107, General Guidelines—Local Board of Education—Level Requests, §3109, Criteria for Appeal, §3111, Criteria for Waiver, §1601, Entry into and Exit from Academically Unacceptable School Status, §1603, Requirements for Academically Unacceptable Schools, §1901, District Level Tasks, §1903, District Support at Each Level, §2101, State Support at Each Level, and §4909, Additional State Support. 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.

The changes in Bulletin 111, Chapter 6 provide detail of how the cohort is determined for a graduation index and how a graduation index is documented.

The changes in Bulletin 111, Chapter 31 address the timeframe of the appeal/waiver and data certification process impacting schools and guidelines to submit the proper documentation related to the accountability system.

The changes in Bulletin 111, Chapters 16, 19, 21, and 49 establish reasonable guidelines to remove content relative to distinguished educators and turnaround specialists from the accountability policy. These changes were submitted to BESE upon the recommendation of the Accountability Advisory Commission.

**Title 28
EDUCATION**

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 6. Graduation Index

§603. Determining a Cohort for a Graduation Index

A. A cohort of students is all students who entered 9th grade for the first time at a given school in a given academic year.

B. ...

C. Students who exit a school system in less than four years for legitimate reasons shall not be included in the cohort's graduation index calculations.

1. Exit Codes 7, 8, 9, 10, 12, 14, 16, 20, 21, 27, 28, 29, and 30 from §611 are legitimate.

2. Students that LEAs exit from a school using certain codes (08, 09, 15, 21) must subsequently appear in the

Student Information System or they shall be considered dropouts.

D. - G. ...

H. Students with disabilities whose IEPs state that they will take longer than 4 years to earn a regular diploma shall be added to the cohort with which they complete/graduate provided they are less than 22 years of age at the beginning of the academic year.

I. All students (excluding those defined in C), regardless of entry or exit dates, are included in the state-level cohort.

J. Students who exit K-12 education and enroll in adult education shall earn points for their school only if a GED is awarded by October 1 of the following academic year.

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 33:424 (March 2007), LR 33:2031 (October 2007), LR 35:2312 (November 2009).

§611. Documenting a Graduation Index

A. - D. ...

E. The authenticity of exit code documentation is determined by the LDE.

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 35:639 (April 2009), LR 35:2312 (November 2009).

Chapter 16. Academically Unacceptable Schools and Subgroup Component Failure

§1601. Entry into and Exit from Academically Unacceptable School Status

A. - F. ...

G. Academically Unacceptable Schools

Academically Unacceptable Schools			
Level	Remedy	Title 1	Non-Title 1
AUS 1 (Year 1) (notified Aug. 1)	Revised School Improvement Plan to open academic year	x	x
	School Choice	x	x
	Scholastic Audit	x	x
	Write a new SIP for the remainder of the current year and the next two years based on Audit findings. [*SIP must incorporate remedies from AUS 2 and 3]	x	x
AUS 2 (Year 2)	Implement SIP based on Scholastic Audit ...	x	x
	Title 1 Schools - Offer Supplemental Educational Services	x	
	Non-Title 1 Schools - Add from Corrective Action List		x
	Quarterly Implementation Reports	x	x
AUS 3 (Year 3)	Add from Corrective Action List (all schools)	x	x
	Develop Reconstitution Plan	x	x
AUS 4 (Year 4)	Submit Reconstitution Plan (Type 5 Charter School Proposals are submitted at the same time)	x	x
AUS 5 (Year 5)	Implement Reconstitution Plan	x	x

Academically Unacceptable Schools			
Level	Remedy	Title 1	Non-Title 1
AUS 6 (Year 6)	Implement Reconstitution Plan	x	x
AUS 6+ (more than 6 years)	Eligible for RSD	x	x

*To establish continuity in the SIP that addresses the scholastic audit—the SIP that is to get the school out of trouble before AUS 4—schools must plan to move to AUS 2 and AUS 3 over the following two years. This prevents extensive revisions to a plan in order to implement SES in AUS 2 or to add a "corrective action" in AUS 2 or 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2595 (December 2007), amended LR 35:2312 (November 2009).

§1603. Requirements for Academically Unacceptable Schools

A. - C.4. ...

5. Repealed

D. Schools entering AUS Level 3 (AUS3) must:

1. add a remedy from the corrective action list (all schools); and
2. develop a reconstitution plan (see D below).

E. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 33:2596 (December 2007), amended LR 35:2313 (November 2009).

Chapter 19 School Improvement, Academically Unacceptable Schools and Subgroup Component Failure: District and State Level Tasks

§1901. District Level Tasks

A. - A.6. ...

B. Districts with schools in AUS 2 and/or SI2 must:

1. continue to adhere to the requirements of schools as described in §1901 and Chapter 16;
2. offer supplemental educational services for Title I schools;
3. assist schools with any additional requirements from the corrective action list in Chapter 16.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 31:1515 (July 2005), LR 33:2598 (December 2007), LR 35:2313 (November 2009).

§1903. District Support at Each Level

A. District's responsibilities for school(s) in School Improvement 3:

1. continue to adhere to the requirements of schools in school improvement as described in §1901;
2. offer supplemental educational services for Title I schools.

B. District's responsibilities for schools in School Improvement 4:

1. continue to adhere to the requirements of SI 3;
2. assist schools with an additional requirement from corrective action list:

- a. replace school staff;
- b. implement new curriculum;
- c. decrease management authority;
- d. contract an outside expert;
- e. extend the school year or school day;
- f. restructure.

C. - D.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 30:2745 (December 2004), LR 31:1516 (July 2005), LR 35:2313 (November 2009).

Chapter 21. State-Level School Improvement, Academically Unacceptable Schools and Subgroup Component Failure Tasks

§2101. State Support at Each Level

A. - A.9. ...

10. SBESE shall approve or disapprove reconstitution plans;

11. SBESE shall approve or disapprove alternate governance plans;

12. SBESE shall approve or disapprove "focused reconstitution" plans;

13. monitor the implementation of all schools' reconstitution/alternate governance plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2748 (December 2003), amended LR 30:2745 (December 2004), LR 31:1516 (July 2005), LR 32:1027 (June 2006), LR 33:2598 (December 2007), LR 35:2313 (November 2009).

Chapter 31. Data Correction and Appeal/Waivers Procedure

§3101. Appeals/Waivers and Data Certification Processes

A. An appeal/waiver procedure and a data certification process have been authorized by the State Board of Elementary and Secondary Education (SBESE) and shall be used to address unforeseen and aberrant factors and to correct inaccurate accountability data impacting schools in Louisiana.

1. Beginning with the 2008-09 academic year, in compliance with the requirement in the *No Child Left Behind Act* of 2001 that a school shall have an opportunity to review school level data prior to being identified as an Academically Unacceptable School or failing the subgroup component, the LDE shall establish a data certification period for all schools/LEAs to correct any inaccurate accountability data.

a. The LDE shall provide a period (or periods) of not less than 30 calendar days for final review, correction, and verification of accountability data to be used in the calculation of the Growth School Performance Score, the proficiency rates compared to the Annual Measurable Objectives, and the 4-year cohort graduation rate

b. The data shall include assessment data from the prior spring administration and attendance, exit, and graduation data from the prior academic year.

c. The LDE shall establish a 2 year transition period for the correction of graduation cohort data due to the longitudinal nature of the data. Following the transition, all

exit and incentive point data must be corrected during the year following its collection.

d. The LDE will provide training to district level staff on an annual basis.

2. All data correction must occur during the designated data certification period.

3. Each LEA must collect supporting documentation for every data element that is corrected and maintain the documentation on file for at least seven years.

4. Each school district shall create and implement a district data certification procedure that requires the site-based administrator at each accountable school to review all accountability data during the data certification period.

a. Each site-based administrator shall sign a statement certifying that the school accountability data is accurate.

b. Each local superintendent shall sign a statement certifying that the district accountability data is accurate.

c. The signed statements in Subparagraphs a and b above shall be filed in the LEA for a minimum of seven years.

B. The LDE shall review all data corrections during the certification period and grant approval of those proven valid. The LDE may request documentation to support the validity of the changes.

C. The appeal/waiver procedure is created to address issues when the literal application of accountability policy does not consider certain unforeseen and unusual circumstances.

1. All appeal/waiver requests must be submitted to the LDE within 15 working days of the fall accountability release.

2. The LDE shall review appeal/waiver requests and make recommendations to the SBESE at the Student/School Performance and Support Committee meeting during first regularly scheduled BESE sessions following 75 calendar days after the fall accountability release. Within this interval, the LDE shall notify LEAs of its recommendations and allow them to respond in writing. The LDE's recommendations and LEA responses will be forwarded to SBESE for final disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2751 (December 2003), amended LR 30:1620 (August 2004), repromulgated LR 30:1996 (September 2004), amended LR 30:2257 (October 2004), LR 31:2422 (October 2005), LR 35:2313 (November 2009).

§3105. General Guidelines—Parent/School-Level Requests

A. Parents or individual schools seeking an appeal or waiver on issues relating to Louisiana's District and School Accountability System shall file their requests, regardless of the type, through the local superintendent, or appointed representative as authorized by the local governing board of education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2752 (December 2003), amended LR 35:2314 (November 2009).

§3107. General Guidelines—Local Board of Education-Level Requests

A. The local superintendent or official representative of each local governing board of education shall complete the LDE's Appeals/Waivers Request Form and provide supporting documentation to the Division of School Standards, Accountability, and Assistance no later than 15 working days after the official release of the fall accountability results.

B. Data corrections shall not be grounds for an appeal or waiver request as all data corrections shall be made prior to the release regardless of the source of any errors.

1. Requests concerning either the inclusion or exclusion of special education student scores in the calculations of a school's SPS and growth target, except as outlined in Bulletin 111, shall not be considered by the LDE.

C. Supporting documentation for appeal/waiver requests should clearly outline the unforeseen and unusual factors that generate the requests. The local school system shall be responsible for supplying the LDE with information necessary for recalculating the school's SPS and/or subgroup component results per LDE's instructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2752 (December 2003), amended LR 30:2258 (October 2004), LR 31:1516 (July 2005), LR 35:2314 (November 2009).

§3109. Criteria for Appeal

A. LEA superintendents shall notify the LDE in writing of any changes to existing school configurations and newly opened schools no later than the 15 day appeal/waiver window during the first year of the reconfiguration and school opening. All school closures must be reported at the end of the schools' last academic year of operation.

B. Appeal recalculations shall be made using the information provided to the LDE in the following instances.

1. At least 10 percent of the students eligible for spring testing transferred into the school after October 1 of the same academic year from schools within the district (see §517).

a. Recalculations based on intra-district transfer shall exclude all such students from the growth calculation and the prior baseline calculation.

b. Any transfers resulting from school and district decisions shall not be included in recalculations (transfers to alternative programs, discipline centers, dropout prevention programs, pre-GED skills options programs, etc.).

c. Only changes in the Growth SPS and the Growth Label will be reflected on the School Report Cards.

d. No changes shall be made on the new Baseline SPS or the Performance Label.

2. A school's (inclusive of those paired or shared) enrollment has significantly changed by 50 percent or more from the previous academic year as a result of redistricting by the local governing board of education.

C. LEAs may petition the SBESE in instances not addressed by policy or in instances when the policy is unclear.

D. An appeal shall be filed by the LEA in order to receive monetary rewards for any eligible closed school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2752 (December 2003), amended LR 30:1620 (August 2004), repromulgated LR 30:1997 (September 2004), amended LR 31:1517 (July 2005), LR 31:2423 (October 2005), LR 35:2314 (November 2009).

§3111. Criteria for Waiver

A. Factors beyond the reasonable control of the local governing board of education and also beyond the reasonable control of the school exist.

B. A school lacks the statistically significant number of testing and/or graduation cohort members necessary to calculate the SPS and has no systematic "feeding" pattern into another school by which data could be "shared" because the school is:

1. - 6. ...
7. Repealed

C. - C.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2752 (December 2003), amended LR 31:1517 (July 2005), LR 31:2423 (October 2005), LR 35:2315 (November 2009).

Chapter 49. School District Academically in Crisis

§4909. Additional State Support

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:10.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:545 (April 2006), repealed LR 35:2315 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#010

RULE

Board of Elementary and Secondary Education

Bulletin 120—Adult Education Data Quality and Procedures
(LAC 28: CXVII.101, 301-309, 501, and 701-707)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 120—Adult Education Data Quality and Procedures*: §101. *Introduction*, §301. *Standardized Assessments*, §303. *Approved Assessments*, §305. *Placement in an Educational Functioning Level*, §307. *Follow-up Assessments*, §309. *Special Populations*, §501. *NRS Core and Secondary Measures*, §701. *Data Accuracy and Entry*, §703. *Quarterly Reporting*, §705. *State Approved Adult Education Data System*, and §707. *Resolving Data Analysis Problems and Deviations*. A summary of the revisions to *Bulletin 120—Adult Education Data Quality and Procedures* are:

Revised the Division title from Division of Family, Career and Technical Education to Division of Dropout Prevention, Adult and Family Services.

Added Program Performance requirements.

Revised approved assessments to reflect current USDE approved assessment updates.

Included NRS approved assessment ranges.

Added accommodation information to comply with NRS and OVAE requirements.

Included training requirements such as timelines and responsibilities of the state and local agencies.

The revisions to *Bulletin 120—Adult Education Data Quality and Procedures* will ensure that the Department guidelines are aligned with the USDE National Reporting System for Adult Education.

Title 28 EDUCATION

Part CXVII. Bulletin 120—Adult Education Data Quality and Procedures

Chapter 1. General Provisions

§101. Introduction

A. The Louisiana Department of Education, Division of Dropout Prevention, Adult and Family Services developed *Bulletin 120—Adult Education Data Quality and Procedures* to assist local adult education programs in meeting the reporting requirements of the National Reporting System (NRS) for Adult Education. This bulletin is designed to:

A.1. - B.4. ...

C. The Louisiana Department of Education, Division of Dropout Prevention, Adult and Family Services and the National Reporting System for Adult Education are committed to assisting local adult education programs in improving the quality and utility of program data. Questions regarding this bulletin or this Part CXVII should be directed to the Louisiana Department of Education, Division of Dropout Prevention, Adult and Family Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3066 (December 2005), amended LR 34:605 (April 2008), LR 35:2315 (November 2009).

Chapter 3. Assessment and Student Placement

§301. Standardized Assessments

A. NRS policies require local adult education programs to assess and place students at an educational functioning level (EFL) upon intake and at least one other time during the program year. Standardized assessments used to place students or demonstrate educational growth must be both valid and normed for adult students. The initial assessments are to be administered at intake or the first 12 hours of attendance.

B. Each local director is responsible for training instructors, paraprofessionals, and volunteers in the proper procedures for administering NRS approved assessments. All staff members involved in gathering, analyzing, compiling, and reporting NRS data shall participate in professional development training as specified in the State Plan, Section 12.1. The state also provides opportunities throughout the year for instructors to become certified in the administration of the approved assessments. The training is administered by the local program supervisor or director and sessions are scheduled annually plus on an as needed basis for new personnel.

C. In order to provide professional development opportunities for all local providers, the state staff will conduct three regional meetings and one state conference annually. These conferences include seminars and workshops on assessment policies and procedures, accommodations for assessing students with disabilities,

NRS policy, data collection procedures, definitions of measures, and specific training for conducting assessments used in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3066 (December 2005), LR 35:2315 (November 2009).

§303. Approved Assessments

A. - B.2. ...

3. Wonderlic (to be used at the Low Intermediate Basic Education, High Intermediate Basic Education and Low Adult Secondary Education levels only).

B.4. - C.2. ...

3. Test for Adult Basic Education – Complete Language Assessment System – English (TABE CLAS-E)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3066 (December 2005), amended LR 34:605 (April 2008), LR 35:2316 (November 2009).

§305. Placement in an Educational Functioning Level

A. Upon administration of an approved assessment, at intake or within the first 12 hours of attendance, local programs are to place students at an educational functioning level. The TABE Locator test is administered prior to the full assessment. Charts developed from the *NRS Implementation Guidelines*, shall be used for determining the appropriate EFL for a student. These charts are included in the instructor manual pertaining to this Part CXVII and are located on the Adult Education website at www.louisianaschools.net.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3067 (December 2005), amended LR 34:605 (April 2008), LR 35:2316 (November 2009)

§307. Follow-up Assessments

A. NRS reporting policies state that programs use a different form of the same test for the follow-up (post-test) assessment for a student. Both the pre-test and post-test shall be administered and scored according to the test directions provided by the publisher. Test publisher guidelines are available on the Adult Education website www.louisianaschools.net for approved assessments. Post-tests shall be administered after the student has:

A.1. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3067 (December 2005), amended LR 34:605 (April 2008), LR 35:2316 (November 2009)

§309. Special Populations

A. Assessments for special populations are administered with appropriate accommodations as specified by the publisher of the approved assessment. Test publisher accommodation guidelines for approved assessments are available on the Adult Education website www.louisianaschools.net. Accommodations for adult learners who self-disclose a disability documented by a

qualified professional and are eligible for accommodations under the provisions of Section 504 of the Americans with Disabilities Act (ADA) may be granted appropriate testing accommodations. Adult Education programs must document that adult learners were given the opportunity to self-disclose any disability during the student orientation process.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3067 (December 2005), amended LR 34:605 (April 2008), LR 35:2316 (November 2009).

Chapter 5. Adult Education Core Measures

§501. NRS Core and Secondary Measures

A. - B. ...

C. Programs must meet a minimum of 50 percent of the federally-approved performance benchmarks as measured by NRS Tables 4 and 5 annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3067 (December 2005), amended LR 34:606 (April 2008), LR 35:2316 (November 2009).

Chapter 7. Data Reporting

§701. Data Accuracy and Entry

A. ...

* * *

B. The Louisiana Department of Education requires that local programs submit a designation of distance learner for students enrolled in the adult education program, by participating in state-approved curricula and following a state-approved model for distance education. A list of state-approved curricula utilized for distance learning can be obtained on the Adult Education website at www.louisianaschools.net.

1. The student must be designated as a distance education learner if the majority of the student's attendance hours are in distance education. NRS approved proxy contact hours include:

a. Clock Time Model, which assigns contact hours based on the elapsed time that a learner is connected to, or engaged in an online or stand alone software program. Student hours are taken from the activity statistics provided in the software.

b. Teacher Verification Model, which assigns a fixed number of hours of credit for each completed assignment based on teacher determination of the extent to which a learner engaged in, or completed, the assignment. Telephone call and email contact are allowable in this model; however a contact log containing the date of contact, student name, topic discussed, and length of contact. The contact log must be filed with student attendance records.

c. Learner Mastery Model, which assigns a fixed number of hours of credit based on the learner passing a test on the content of each lesson. Learners work with the curriculum and materials and when they feel they have mastered the material, take a test. A high percentage of correct answers (70 percent) earns the credit hours attached to the material.

2. Students must have at least 12 onsite contact hours with the program.

B.3. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3068 (December 2005), amended LR 34:606 (April 2008), LR 35:2316 (November 2009).

§703. Quarterly Reporting

A. The Louisiana Department of Education, Division of Dropout Prevention, Adult and Family Services requires that local programs enter data at least monthly during a program year. City or parish supervisors or program directors are responsible for timely entry into the state approved adult education data management system of local program data and ensuring its accuracy. Department of Education staff will review data for errors and contact supervisors or program directors to discuss needed corrections to local program data at least quarterly. Local program data, for the prior month should be entered by the tenth day of each month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3068 (December 2005), amended LR 34:606 (April 2008), LR 35:2317 (November 2009).

§705. State Approved Adult Education Data System

A. The Louisiana Department of Education mandates that adult education programs, which it funds, must use the state approved Adult Education Data System. Local programs are responsible for covering the costs of implementing and maintaining the system with a portion of their local grant funds. Staff from the Louisiana Department of Education and staff from the state approved adult education data management system are committed to improving data quality by providing professional development workshops each year. The program supervisor or director will ensure that all program staff involved in gathering, analyzing, compiling, and reporting data for NRS will attend, at a minimum, an annual inservice meeting addressing the following topics: NRS and accountability policies; data collection process; definitions of performance measures; conducting pre and post assessments; and using data for improvement. While the above information can serve as a refresher for returning staff each year, it must also be included as part of the required inservice for new staff throughout the year. Adult Education staff shall participate in professional development training as specified in the State Plan, Section 12.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3069 (December 2005), amended LR 34:607 (April 2008), LR 35:2317 (November 2009).

§707. Resolving Data Analysis Problems and Deviations

A. Upon receipt of data submitted by local programs, the Louisiana Department of Education, Division of Prevention, Adult and Family Services staff review program data quarterly for errors. It is the responsibility of the local program supervisor or director to conduct the initial review of the data, using the diagnostic features of the state

approved adult education data management system and other instructions provided by department staff.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:14.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, Adult Education Services, LR 31:3069 (December 2005), amended LR 34:607 (April 2008), LR 35:2317 (November 2009).

Jeanette B. Vosburg
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0911#011

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Adult Education Programs (LAC 28: CXV.2701, 2703, 2705, 2707, 2709, and 2711)

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*: §2701. Program Administration, §2703. Requirements for Students, §2705. Requirements for Taking the GED Test, §2707. Requirements for Passing the GED Test, §2709. Requirements for GED Retesting, and §2711. Issuance of Equivalency Diplomas. The Department of Education has revised *Bulletin 741—Louisiana Handbook for Public School Administrators* to better align with the USDE National Reporting System for Adult Education and to provide guidance to LEAs for the Act 59 Age Waiver request. A summary of the revisions to *Bulletin 741—Louisiana Handbook for Public School Administrators* are:

- Revise the Division title from Division of Family, Career and Technical Education to Division of Dropout Prevention, Adult and Family Services.
- Define family and economic hardship for the *Act 59 Age Waiver*.
- Revise approved assessments to reflect current USDE approved assessment updates and test publisher’s guidelines.
- Change the data reporting requirements from quarterly to monthly.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators—Adult Education Programs

Chapter 27. Adult Education Programs

§2701. Program Administration

A. - B.1.a.i....

ii. Comprehensive Adult Student Assessment System (CASAS);

iii. WorkKeys (May be used only at the High Intermediate Basic Education and Adult Secondary Education Educational Functioning Level);

iv. Wonderlic (May be used at the Low Intermediate Basic Education, High Intermediate Basic Education and Low Adult Secondary Education levels only).

B.1.b. - B.1.b.ii. ...

iii. Test for Adult Basic Education—Complete Language Assessment System—English (TABE CLAS-E)

2. Data must be entered at least monthly during a program year. City or parish supervisors or program directors are responsible for timely entry into the state approved adult education data management system of local program data and ensuring its accuracy. Department of Education staff will review data for errors and contact supervisors or program directors to discuss needed corrections to local program data at least quarterly. Local program data, for the prior month should be entered by the tenth day of each month.

B.3. ...

a. attended for 60-100 hours based upon test publisher's guidelines for the amount of time needed for a student to show a meaningful gain; or

B.3.b. ...

c. completed an Individualized Prescription of Instruction for the area being used for NRS reporting purposes and in accordance with test publisher's guidelines.

NOTE: Refer to the Louisiana State Plan for Adult Education and R.S. 17:14 for administration of the program.

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).

§2703. Requirements for Students

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

i. Family and/or economic hardship is defined as 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.2. - B.3. ...

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).

§2705. Requirements for Taking the GED Test

A. - A.3.e. ...

i. Family and/or economic hardship defined as 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.

A.4. - B.1. ...

2. Individuals between 17-18 years of age or 16 years of age with an approved age waiver may qualify for the GED Test by taking the Official Half-Length GED Practice Test and scoring a minimum of 410 on each part, with an average score of 450.

3. - 5. ...

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 LR35:2318 (November 2009).

§2707. Requirements for Passing the GED Test

A. - B. ...

C. The student shall score a minimum of 410 on each section and an overall average standard score of 450 on all five tests.

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).

§2709. Requirements for GED Retesting

A. - D. ...

E. The student shall score a minimum of 410 on each of the retested sections and an overall average standard score of 450 on all five tests.

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).

§2711. Issuance of Equivalency Diplomas

A. ...

B. A Louisiana resident who successfully completes the GED Test at an official out-of-state GED testing center may be entitled to receive an equivalency diploma, provided that an official copy of the GED Test results are submitted for review to the Division of Dropout Prevention, Adult and Family Services in the DOE and provided that the student meets all other qualifications to receive an equivalency diploma.

C. - G. ...

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).

Jeanette B. Vosburg
Executive Director

0911#021

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Approval for Alternative Schools/Programs Evaluation of Alternative Schools/Programs (LAC 28: CXV.2903 and 2905)

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*: §2903.Approval For Alternative Schools/Programs and §2905.Evaluation of Alternative Schools/Programs. The revision is technical in nature to bring BESE policy into alignment with current state law that requires that BESE approve all alternative schools and/or programs.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 29. Alternative Schools and Programs

§2903. Approval for Alternative Schools/Programs

A. Alternative schools/programs shall comply with prescribed policies and standards for regular schools except for those deviations granted by BESE.

B. Approval to operate an Alternative School/Program shall be obtained from BESE.

1. An LEA choosing to implement a new Alternative School/Program shall submit an application to the Division of Dropout Prevention, Adult and Family Services by on or before the date prescribed by the DOE.

2. The DOE will provide BESE with a listing of alternative schools/programs recommended for approval in June of each year.

C. An approved alternative school/program shall be described in the LEA's Pupil Progression Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:100.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 35:2318 (November 2009).

§2905. Evaluation of Alternative Schools/Programs

A. Each LEA annually shall evaluate each alternative school/program. The evaluation shall be based upon the standards for approval of alternative schools/programs and shall include testing of basic skills for student participants. The process of evaluation shall also include teacher, parent, and student input from the alternative school. The annual report shall be made to the DOE on or before the date prescribed by the DOE.

NOTE: Refer to the Alternative Education Handbook for program operation guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:100.5.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1308 (June 2005), amended LR 35:2319 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#022

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Carnegie Credit for Middle School Students (LAC 28: CXV.2321)

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*: §2321. Carnegie Credit for Middle School Students. This policy revision adds Introduction to Business Computer Applications to the list of courses which middle school students may take for high school Carnegie credit. This policy revision is being revised so that middle school students can take this course for high school credit. This course is a prerequisite for many career/tech courses.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2321. Carnegie Credit for Middle School Students

A. Students in grades five through eight are eligible to receive Carnegie credit for courses in the high school program of studies in mathematics, science, social studies,

English, foreign language, keyboarding/keyboarding applications, Introduction to Business Computer Applications, or computer/technology literacy.

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 31:1293 (June 2005), amended LR 33:430 (March 2007), LR 33:2601 (December 2007), LR 34:609 (April 2008), LR 34:2031 (October 2008), LR 35:443 (March 2009), LR 35:2319 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#016

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—General Career and Technical Education (LAC 28: CXV.2377)

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*: §2377. General Career and Technical Education. The changes will remove Teacher Cadet I and II from General Career and Technical Education course offerings and change other course titles to bring current Career and Technical course offerings in line with National Academy Foundation course names and credit value. The action will update Career and Technical course offerings. In updating these course offerings our Career and Technical program of studies will be aligned with National Academy Foundation course names and credits. It will remove Cadet I and II which has been replaced by STAR I and II.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2377. General Career and Technical Education

A. General Career and Technical Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
CTE Internship I	11-12	1
CTE Internship II	12	1
CTE Internship I	11-12	2
CTE Internship II	12	2
General Cooperative Education I	11-12	3
General Cooperative Education II	12	3
Education for Careers	9-12	1/2 -1
Advanced Television Broadcasting I	10-12	1-3
Advanced Television Broadcasting II	11-12	1-3
Digital Media I	10-12	1-3
Digital Media II	11-12	1-3
Oracle Internet Academy		
Database Design and Programming	11-12	1
Java Programming	11-12	1
Database Programming with PL/SQL	11-12	1
Finance Academy		
Business Economics	11-12	1/2

Course Title(s)	Recommended Grade Level	Units
Financial Services	11-12	1/2
Financial Planning	11-12	1/2
Ethics in Business	11-12	1/2
Insurance	11-12	1/2
Business in a Global Economy	11-12	1/2
Principles of Finance	11-12	1/2 - 1
Principles of Accounting	11-12	1/2
Managerial Accounting	11-12	1/2
Advanced Finance	11-12	1/2
Hospitality and Tourism Academy		
Principles of Hospitality and Tourism	11-12	1/2
Customer Service	11-12	1/2
Sports Entertainment and Event Management	11-12	1/2
Geography and World Cultures	11-12	1/2
Sustainable Tourism	11-12	1/2
Hospitality Marketing	11-12	1/2
Information Technology Academy		
Principles of Information Technology	11-12	1/2
Computer Networking	11-12	1/2
Web Design	11-12	1/2
Databases Design	11-12	1/2
Computer Systems	11-12	1/2
Introduction to Programming	11-12	1/2
Digital Video	11-12	1/2
STAR I	11-12	1
STAR II	12	1
Entrepreneurship	11-12	1

B. ...

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 31:1299 (June 2005), amended LR 32:546 (April 2006), LR 32:1415 (August 2006) LR 33:278 (February 2007), LR 33:2050 (October 2007), LR 34:1386 (July 2008), LR 34:2558 (December 2008), LR 35:2319 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#017

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Health Occupations (LAC 28: CXV.2381)

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*: §2381. Health Occupations. The amendment will change the following recommended grade levels in Health Occupations: (1) Emergency Medical Technician (EMT)—Basic course from a 10-12 recommended grade level to a recommended 12th grade level; and (2) First Responder course from a 9-12 recommended grade level to a recommended grade level of 10-12.

The action has been taken to change the recommended grade levels at which students can take the two courses because students must: (1) be at least 16 years of age to enter the First Responder course; and (2) be at least 17 years of

age to enter the Emergency Medical Technical (EMT)—Basic course, as well as a graduating senior.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2381. Health Occupations

A. Health Occupations course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
AHEC of a Summer Career Exploration	9-12	1/2
Allied Health Services I	10-12	1-2
Allied Health Services II	10-12	1-2
Cooperative Health Occupations	11-12	3
Dental Assistant I	10-12	1-2
Dental Assistant II	11-12	2-3
Emergency Medical Technician—Basic	12	2
First Responder	10 -12	1/2-2
Health Occupations Elective I, II	9-12	1/2-3
Health Science I	11-12	1-2
Health Science II	12	1-2
Introduction to Emergency Medical Technology	10-12	2
Introduction to Health Occupations	9-12	1
Introduction to Pharmacy Assistant	10-12	1
Medical Assistant I	10-12	1-2
Medical Assistant II	11-12	1-2
Medical Assistant III	12	1-2
Medical Terminology	9-12	1
Nurse Assistant	10-12	2-3
Patient Care Technician	12	3
Pharmacy Technician	12	1-2
Sports Medicine I	10-12	1/2
Sports Medicine II	11-12	1/2
Sports Medicine III	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 33:1615 (August 2007), LR 33:2051 (October 2007), LR 35:2320 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#018

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—High School Graduation Requirements and Mathematics (LAC 28: CXV.2319 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* §2319, High School Graduation Requirements and §2353, Mathematics. This revision adds

Applied Algebra and Applied Geometry to the Mathematics Program of Studies. Applied Algebra I may be taken in place of Algebra I and Applied Geometry may be taken in place of Geometry for students following the LA Core 4 or Basic Core curricula. These courses were added to provide more relevance to the mathematics curriculum.

**Title 28
EDUCATION**

**Part CXV. Bulletin 741—Louisiana Handbook for
School Administrators**

Chapter 23. Curriculum and Instruction

§2319. High School Graduation Requirements

A. - E.1. ...

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.

English	4 units
Shall be English I, II, and III, and English IV or Senior Applications in English	
Mathematics	4 units
Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units) Geometry or Applied Geometry The remaining units shall come from the following: Algebra II, Financial Mathematics, Math Essentials, Advanced Math—Pre-Calculus, Advanced Math—Functions and Statistics, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally initiated elective approved by BESE as a math substitute.	
Science	3 units
Shall be the following: 1 unit of Biology 1 unit from the following physical science cluster: Physical Science, Integrated Science, Chemistry I, Physics I, Physics of Technology I 1 unit from the following courses: Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, Anatomy and Physiology, an additional course from the physical science cluster, or a locally initiated elective approved by BESE as a science substitute. • Students may not take both Integrated Science and Physical Science • Agriscience I is a prerequisite for Agriscience II and is an elective course.	
Social Studies	3 units
Shall be American History, 1/2 unit of Civics or AP American Government, 1/2 unit of Free Enterprise; and 1 of the following: World History, World Geography, Western Civilization, or AP European History.	
Health Education	1/2 unit
Physical Education	1 1/2 units
Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students. A maximum of 4 units of Physical Education may be used toward graduation. NOTE: The substitution of JROTC is permissible.	
Electives	8 units
TOTAL	24 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.

English	4 units
Shall be English I, II, III, and English IV	
Mathematics	4 units
Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 2 Geometry or Applied Geometry Algebra II The remaining unit shall come from the following: Financial Mathematics, Math Essentials, Advanced Math—Pre-Calculus, Advanced Math—Functions and Statistics, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally-initiated elective approved by BESE as a math substitute	
Science	4 units
Shall be the following: 1 unit of Biology 1 unit of Chemistry 2 units from the following courses: Physical Science, Integrated Science, Physics I, Physics of Technology I, Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience II, Anatomy and Physiology, or a locally initiated elective approved by BESE as a science substitute. • Students may not take both Integrated Science and Physical Science • Agriscience I is a prerequisite for Agriscience II and is an elective course. A student completing a Career and Technical Area of Concentration may substitute a BESE/Board of Regents approved IBC-related course from within the student's Area of Concentration for the 4th required science unit	
Social Studies	4 units
Shall be the following 1/2 unit of Civics or AP American Government 1/2 unit of Free Enterprise 1 unit of American History 1 unit from the following: World History, World Geography, Western Civilization, or AP European History 1 unit from the following: World History, World Geography, Western Civilization, AP European History, Law Studies, Psychology, Sociology, Civics (second semester—1/2 credit) or African American Studies. A student completing a Career and Technical Area of Concentration may substitute a BESE/Board of Regents approved IBC-related course from within the student's Area of Concentration for the 4th required social studies unit.	
Health Education	1/2 unit
Physical Education	1 1/2 units
Shall be Physical Education I and Physical Education II, or Adapted Physical Education for eligible special education students. A maximum of four units of Physical Education may be used toward graduation. NOTE: The substitution of JROTC is permissible.	
Foreign Language	2 units
Shall be 2 units in the same foreign language or 2 Speech courses	
Arts	1 unit
1 unit Fine Arts Survey or 1 unit of Art (§2333), Dance (§2337), Music (§2355), Theatre Arts (§2333), or Applied Arts. A student completing a Career and Technical Area of Concentration may substitute a BESE/Board of Regents approved IBC-related course from within the student's area of concentration for the required applied arts unit.	
Electives	3 units
TOTAL	24 units

F. - J. ...

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 35:2321 (November).

§2353. Mathematics

A. Effective for 2008-2009 incoming freshmen, four units of mathematics shall be required for graduations. All students must complete the following:

1. Algebra I (1 unit), Applied Algebra I (1 unit), or Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units)

2. Geometry or Applied Geometry. The remaining units shall come from the following:

a. Algebra II, Financial Mathematics, Math Essentials, Advanced Math-Pre-Calculus, Advanced Math-Functions and Statistics, Pre-Calculus, Calculus, Probability and Statistics, Discrete Mathematics, or a locally-initiated elective approved by BESE as a math substitute.

B. 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:

1. Algebra I (1 unit); or
2. Algebra I-Pt. 1 and Algebra I-Pt. 2 (2 units); or
3. Integrated Mathematics I (1 unit). The remaining unit(s) shall come from the following.

a. Integrated Mathematics II, Integrated Mathematics III, Geometry, Algebra II, Financial Mathematics, Advanced Math-Pre-Calculus, Advanced Math-Functions and Statistics, Pre-Calculus, Calculus, Probability and Statistics, Math Essentials and Discrete Mathematics.

C. For incoming freshmen 1997-98 to 2004-2005, the three required mathematics courses shall be selected from the following courses and may include a maximum of two entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra I-Part 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Math-Pre-Calculus, Advanced Math-Functions and Statistics, Pre-Calculus, Calculus, Probability and Statistics, Math Essentials and Discrete Mathematics.

D. Students who score at the unsatisfactory achievement level on the mathematics component of grade eight LEAP 21 shall pass a high school remedial course in mathematics before enrolling in any course in the Secondary Program of Studies for Mathematics.

1. Introductory Algebra/Geometry may be used as the high school remediation course for students who have been promoted to the ninth grade without having passed the mathematics component of grade eight LEAP.

E. Financial Mathematics may be taught by teachers certified in Business Education.

F. The mathematics course offerings shall be as follows.

Course Title(s)	Units
Advanced Math—Pre-Calculus	1
Advanced Math—Functions and Statistics	1
Algebra I, II	1 each
Algebra I—Part 1	1
Algebra I—Part 2	1
Applied Algebra I	1
Applied Geometry	1
Calculus	1
Discrete Mathematics	1
Financial Mathematics	1
Geometry	1
Integrated Mathematics I, II, III	1 each
Introductory Algebra/Geometry (Remediation Elective)	1
Pre-Calculus	1
Probability and Statistics	1
Math Essentials	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 31:1296 (June 2005), amended LR 33:2605 (December 2007), LR 34:1609 (August 2008), LR 35:2322 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#015

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Immunizations (LAC 28: CXV.1121)

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*, §1121, "Immunizations." The Rule is based upon the enactment of R.S. 17:170.4 which requires immunization against meningococcal disease for certain students.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1121. Immunizations

A. - G. ...

H. Beginning with 2009-2010 school year, students entering sixth grade and students eleven years old entering any grade and students eleven years old participating in approved home study shall provide evidence of current immunization against meningococcal disease as a condition of entry into such grade at any city, parish or other local public school or nonpublic school. Chief administrators are responsible for checking students' records and ensuring

enforcement of provisions. Exemptions include: parent/guardian waivers for religious or personal reasons, written statement from physician stating contraindicated medical reasons, shortage of supply of vaccine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:170; R.S. 17:170.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1277 (June 2005), amended LR 33:429 (March 2007), LR 35:2322 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#014

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Requirements for Teachers (LAC 28: CXV.3103)

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*: Requirements for Teachers. This amendment will expand the CTTIE teacher certification for instructors in Technology Education, Law and Public Safety, and Patient Care Technician. This certification will allow qualified instructors, who have served in business/industry, to become instructors for the courses listed above, which will prepare secondary students to further their education in two-year technical and four-year university programs, thereby meeting a great demand for a qualified workforce.

**Title 28
EDUCATION**

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 31. Career and Technical Education (CTE) §3103. Requirements for Teachers

A. The CTE teacher shall hold a valid Louisiana teaching certificate or valid Career and technical trade and industrial education (CTTIE) certificate that entitles the holder to teach in the career area of the actual teaching assignment. Certification is required to teach:

1. all law and public safety courses;
2. Engineering Design I and II;
3. Process Technician I and II;
4. Project Lead the Way; and
5. Patient Care Technician.

[Refer to LAC 28:CXXXI.Bulletin 746—Louisiana Standards for State Certification of School Personnel, §501-5011.]

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17: 422.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1309 (June 2005), amended LR 35:2323 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#023

RULE

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, the Board of Elementary and Secondary Education has amended *Bulletin 741—Louisiana Handbook for School Administrators*: §2385. Technology Education. The course will allow students to participate in the Advanced Manufacturing Academy which correlates with the Industrial Operations Area of Concentration-Career Pathway. This action is in direct response to industry demands for workers trained in occupations related to advanced manufacturing.

**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
Communication/Middle School	6-8	-
Construction/Middle School	6-8	-
Manufacturing Technology/Middle School	6-8	-
Modular Technology/Middle School	6-8	-
Transportation Technology/Middle School	6-8	-
Advanced Electricity/Electronics	10-12	1
Advanced Metal Technology	10-12	1
Advanced Technical Drafting	10-12	1
Advanced Wood Technology	10-12	1
Architectural Drafting	10-12	1
Basic Electricity/Electronics	9-12	1
Basic Metal Technology	9-12	1
Basic Technical Drafting	9-12	1
Basic Wood Technology	9-12	1
Communication Technology	9-12	1
Construction Technology	10-12	1
Cooperative Technology Education	10-12	3
Energy, Power, and Transportation Technology	9-12	1
General Technology Education	9-12	1
Manufacturing Technology	9-12	1
Materials and Processes	10-12	1
Physics of Technology I	10-12	1
Physics of Technology II	11-12	1
Power Mechanics	9-12	1
Technology Education Computer Applications	9-12	1
Technology Education Elective I, II	9-12	1/2-3
Welding Technology	10-12	1
Industry-Based Certifications		
Process Technician I, II	11-12	1
ABC Carpentry I, II TE	11-12	1-3
ABC Electrical I, II TE	11-12	1-3
ABC Instrumentation Control Mechanic I, II	11-12	1-3
ABC Pipe Fitter I, II TE	11-12	1-3

Course Title(s)	Recommended Grade Level	Units
ABC Welding Technology I, II TE	11-12	1-3
Introduction to Engineering Design	8 -12	1
Principles of Engineering	9-10	1
Digital Electronics	9-10	1
Aerospace Engineering	11-12	1
Civil Engineering and Architecture	11-12	1
Computer Integrated Manufacturing	11-12	1
Engineering Design and Development	11-12	1
Engineering Design I, II	11-12	1
Marine Engineering	11-12	0.5

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 35:2323 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#019

RULE

Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School Administrators—Trade and Industrial Education (LAC 28:CXV.2387)

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*: §2387. Trade and Industrial Education. The course will allow students to participate in the Advanced Manufacturing Academy which correlates with the Industrial Operations Area of Concentration-Career Pathway. This action is in direct response to industry demands for workers trained in occupations related to advanced manufacturing.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators Chapter 23. Curriculum and Instruction §2387. Trade and Industrial Education

A. Trade and Industrial Education course offerings shall be as follows.

Course Title(s)	Recommended Grade Level	Units
Air Conditioning/ Refrigeration I, II	11-12	1-3
Air Conditioning/ Refrigeration III, IV	11-12	2-3
Auto Body Repair I, II	11-12	1-3
Auto Body Repair III, IV	11-12	2-3
Automotive Technician I, II	11-12	1-3
Automotive Technician III, IV, V, VI	11-12	3
General Automotive Maintenance	11-12	1-3
G.M. Technician I, II	11-12	1-3
ABC Carpentry I, II	11-12	1-3
ABC Electrical I, II	11-12	1-3
ABC Instrumentation Control Mechanic I, II	11-12	1-3

Course Title(s)	Recommended Grade Level	Units
ABC Pipe Fitter I, II	11-12	1-3
ABC Welding Technology I, II	11-12	1-3
Masonry I, II	11-12	1-3
Cabinetmaking I, II	11-12	1-3
Carpentry I, II	11-12	1-3
Carpentry III, IV	11-12	2-3
Culinary Occupations I, II	11-12	1-3
Culinary Occupations III, IV	11-12	2-3
Custom Sewing I, II	11-12	1-3
Computer Electronics I, II	11-12	1-3
Computer Service Technology I, II	11-12	2-3
Commercial Art I, II	11-12	1-3
T & I Cooperative Education (TICE) I	11-12	1-3
T & I Cooperative Education (TICE) II	12	1-3
T & I Elective I	11-12	1-3
T & I Elective II	11-12	1-3
Cosmetology I, II	11-12	1-3
Cosmetology III, IV	11-12	2-3
Diesel Mechanics I, II	11-12	1-3
Diesel Mechanics III, IV	11-12	2-3
Drafting and Design Technology I, II	11-12	1-3
Drafting and Design Technology III, IV	11-12	2-3
Basic Electricity I, II	11-12	1-3
Electronics I, II	11-12	1-3
Industrial Electronics I, II	11-12	1-3
Electrician I, II	11-12	1-3
Electrician III, IV	11-12	2-3
Graphic Arts I, II	11-12	1-3
Graphic Arts III, IV	11-12	2-3
Horticulture I, II	11-12	1-3
Industrial Engines I, II	11-12	1-3
Laboratory Technology I, II	11-12	1-3
Industrial Machine Shop I, II	11-12	1-3
Industrial Machine Shop III, IV	11-12	2-3
Marine Operations I, II	11-12	1-3
Photography I, II	11-12	1-3
Networking Basics	10-12	2-3
Routers and Routing Basics	10-12	2-3
Switching Basics and Intermediate Routing	11-12	2-3
WAN Technologies	11-12	2-3
Plumbing I, II	11-12	1-3
Printing I, II	11-12	1-3
Sheet Metal I, II	11-12	1-3
Outdoor Power Equipment Technician I, II	11-12	1-3
Outdoor Power Equipment Technician III, IV	11-12	2-3
Television Production I, II	11-12	1-3
Upholstery I, II	11-12	1-3
Welding I, II	11-12	1-3
Welding III, IV	11-12	2-3
Hull Shipbuilding	11-12	0.5

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 31:1300 (June 2005), amended LR 32:1415 (August 2006), LR 33:1615 (August 2007), LR 34:2558 (December 2008), LR 35:2324 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#020

RULE

Board of Elementary and Secondary Education

Bulletin 746—Louisiana Standards for State Certification of School Personnel—Out-of-State Principals
(LAC 28:CXXXI.721 and 723)

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*, §721, Out-of-State Principal Level 1 (OSP1) and §723, Out-of-State Principal Level 2 (OSP2). This revision in the out-of-state principal policy will allow principal or assistant principal experience to be accepted for the issuance of OSP1 or 2 certificates and also clarifies the section of the policy that refers to state law or board policy. Current policy does not allow experience as an assistant principal to be accepted for the issuance of an out-of-state principal (OSP 1 or 2) certificates for individuals who have served as principals or assistant principals in other states. Current policy also does not clarify what other law or board policy a candidate must meet for certification.

Title 28 EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 7. Administrative and Supervisory Credentials

Subchapter B. Out-of-State Administrative Certification Structure

§721. Out-of-State Principal Level 1 (OSP1)

A. This is a three year, non-renewable Louisiana certificate issued to an individual who holds comparable out-of-state certification as a principal or educational leader. It authorizes the individual to serve as a principal or assistant principal in a Louisiana public school system, and is issued when upon employment as a principal or assistant principal in a Louisiana public school system.

1. Eligibility requirements:

- a. a valid out-of-state certificate as a principal or comparable educational leader certificate;
- b. a minimum of two years of successful experience as a principal or assistant principal in another state, as verified by the previous out-of-state school district(s);
- c. must have been regularly employed as an assistant principal or principal for at least one semester, or 90 consecutive days, within the five year period immediately preceding first employment in Louisiana. Lacking this, the applicant must earn six semester hours of credit in state-approved courses during the five year period immediately preceding issuance of the OSP1.

d. An applicant who has not been regularly employed for at least one semester, or 90 consecutive days, within the five year period immediately preceding first employment in Louisiana may be issued a one-year non-renewable (OSP) certificate while he/she completes six

semester hours required for the issuance of a three-year non-renewable (OSP 1) certificate.

2. Louisiana Educational Leader Induction Program Requirements. Upon employment as a principal or an assistant principal in a Louisiana public school system, an individual holding an OSP1 certificate must enroll in the state-approved Educational Leader Induction Program under the direction of the Louisiana Department of Education. The individual has three years to complete the induction 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 32:1824 (October 2006), amended LR 35:2325 (November 2009).

§723. Out-of-State Principal Level 2 (OSP2)

A. This certificate is valid for five years and is renewable every five years, based upon successful completion and verification of required continuing learning units.

1. Eligibility requirements:

- a. a valid OSP1 certificate;
- b. completion of Louisiana PRAXIS requirements (School Leaders Licensure Assessment (1010) Effective 7/1/06) or Educational Leadership: Administration and Supervision (0410) completed prior to 1/1/09; OR qualify for PRAXIS/NTE exclusion [as set forth in R.S. 17:7.1.(A)(7)] by fulfilling the following:
 - i. minimum of four years of successful experience as a principal in another state, as verified by the previous out-of-state school district(s);
 - ii. completes one year of employment as a principal in a Louisiana public school system while holding the three-year OSP 1 certificate; and
 - iii. the local superintendent (or designee) of the employing Louisiana public school system has recommended him/her for continued administrative employment in the following school year.

c. completion of the Educational Leader Induction Program under the administration of the Louisiana Department of Education.

2. Renewal Requirements. To maintain a valid OSP2 certificate, the holder is required to complete 150 continuing learning units of professional development consistent with the Individual Professional Growth Plan (IPGP) over a five year time period, beginning with issuance date of the OSP2 certificate.

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 32:1825 (October 2006), amended LR 35:2325 (November 2009)

Jeanette B. Vosburg
Executive Director

0911#024

RULE

Board of Elementary and Secondary Education

Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs (LAC 28:XLV.Chapters 1-5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 996—Standards for Approval of Teacher and or Educational Leader Preparation Programs*. This document replaces in its entirety any previously advertised versions. This revised policy will: (1) clarify the process for state approval and national accreditation; (2) allow the Teacher Education Accreditation Council (TEAC) as an option for national accreditation in addition to NCATE. Current policy explains the steps that institutions of higher education must follow to achieve state approval and national accreditation by meeting standards prescribed by the National Council for the Accreditation of Teacher Education (NCATE). Currently, NCATE is the only option for national accreditation. The revisions will allow greater flexibility to Louisiana higher education institutions regarding national accreditation.

**Title 28
EDUCATION**

Part XLV. Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs

Chapter 1. Introduction

§101. Guidelines

A. Bulletin 996 is intended to guide public and private higher education institutions in the development and review of new and existing teacher and/or educational leader preparation programs, to guide visiting committees in their evaluations of teacher and/or educational leader preparation programs in Louisiana, and to inform all interested persons of the Louisiana standards for teacher preparation programs and the procedures for program evaluation.

B. There are four levels associated with the approval process for new and existing teacher and/or educational leader preparation programs. These levels are described in more detail in Chapter 2, Sections 203-209 of this document. A brief description of the approval process follows:

1. The approval process begins with the development and submission of a proposal to establish a teacher and/or educational leader preparation program.

2. Level I begins when this proposal is approved and culminates in the approval of Level II documents. Teacher and/or educational leader preparation programs may remain at Level I for one year. A one-year extension is possible, with Board of Elementary and Secondary Education (BESE) approval. During Level I, teacher and/or educational leader preparation programs may admit candidates.

3. Level II begins upon approval of Level II documents developed during Level I and culminates with notification of eligibility for national accreditation. Teacher and/or educational leader preparation programs will remain at Level II for one to three years. A one-year extension is possible, with BESE approval. During Level II, teacher and/or educational leader preparation programs may recommend candidates for certification.

4. Level III begins with eligibility for national accreditation. Teacher and/or educational leader preparation programs must host a visit with a national accrediting agency within three years of eligibility. Level III culminates with national accreditation.

5. Level IV is full state approval. This level requires having met all state standards and having received national accreditation.

The approval process begins with the development and submission of a proposal to establish a teacher and/or educational leader preparation program.			
Stage	Documentation	Duration	Action
Level I	Initial proposal is approved. Programs begin preparation of Level II documents.	Programs have one year to submit Level II documents. A one-year extension is possible with prior approval by BESE.	The program may begin to admit candidates.
Level II	Level II documents approved. Programs prepare documentation and apply for national accreditation.	One to three years. A one-year extension is possible with prior approval by BESE.	Program may recommend candidates for certification.
Level III	Program is eligible for national accreditation. Program prepares for accreditation visit.	One to three years	Program must host a joint visit with a national accrediting agency and state representatives.

Level IV	Program receives national accreditation, meets all state standards, and receives full state approval.	For as long as the program maintains national accreditation and state approval.	Program follows national accrediting agency's guidelines.
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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1730 (August 2002), amended LR 30:2453 (November 2004), LR 35:2326 (November 2009).

§103. National Accreditation Standards

A. Accreditation standards established by a national accrediting agency, formally recognized by the U.S. Department of Education (USDOE) and the Council for Higher Education (CHEA) and recognized through a state partnership agreement must be met for national accreditation and for state approval of teacher and/or educational leader preparation programs.

B. These standards focus on the overall quality of the professional education unit, with emphases on policies, procedures, candidates, assessment, field experiences, clinical practice, governance, administration, staffing, and resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(6), R.S. 17:7.2

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002), amended LR 30:2452 (November 2004), LR 35:2326 (November 2009).

§105. State Adoption of National Accreditation Standards

A. The state has adopted the standards prescribed by the National Council for the Accreditation of Teacher Education (NCATE). These standards are available on the NCATE website (www.ncate.org).

B. The state has adopted the Teacher Education Accreditation Council's (TEAC) Principles and Standards. These principles and standards are available on the TEAC Web site (www.teac.org).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7(6), R.S. 17:7.2,

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002), amended LR 30:2454 (November 2004), LR 35:2327 (November 2009).

§107. The Partnership Agreements

A. In September 1999, BESE authorized Cecil J. Picard, State Superintendent of Education, to sign a five-year partnership agreement between the state and the NCATE to conduct joint state program approval and NCATE unit accreditation reviews. Implementation began in 2000 with visits to Louisiana institutions of higher education. In Fall 2004 the agreement was re-authorized for seven years. The NCATE/State Partnership Agreement formalizes current practice and provides the state greater input into the review process.

B. In May 2009, BESE authorized Paul Pastorek, State Superintendent of Education, to sign the partnership agreement between the state and the Teacher Education Accreditation Council (TEAC) to conduct joint state program approval and TEAC Academic Audits. Implementation will begin in Fall 2009 with academic audits at Louisiana institutions of higher education. The TEAC/State Partnership Agreement formalizes the TEAC accreditation process and provides the state greater input into the review process.

C. Teacher and/or educational leader preparation programs at public and private institutions of higher education must pursue accreditation by one of these state-approved national accrediting agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002), amended LR 30:2456 (November 2004), LR 35:2327 (November 2009).

§109. State Standards

A. The Louisiana State Standards for Teachers are unique to Louisiana education initiatives.

B. State standards must be met for state approval of teacher preparation programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1731 (August 2002), amended LR 30:2452 (November 2004), LR 35:2327 (November 2009).

Chapter 2. State Approval for Public and Private Teacher and/or Educational Leader Preparation Units

§201. Process/Procedures

A. The Louisiana Department of Education (LDOE) and Board of Regents (BOR) staff reviews proposals from public

and private, new or reinstated teacher and/or educational leader preparation units/programs for entry into Level I and Level II. When an application is judged satisfactory, a recommendation is made to BESE and BOR for approval to enter the appropriate level. Upon approval by BESE and BOR, the teacher and/or educational leader preparation program will move to the appropriate level.

B. The state may conduct scheduled and/or unscheduled reviews of the teacher and/or educational leader preparation unit/ program, including on-site visits, at any time during the process.

C. Public and out-of-state private institutions must submit duplicate documents to the Board of Regents for program approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2452 (November 2004), amended LR 35:2327 (November 2009).

§203. Level I Approval

A. Level I is entered upon approval by BESE and BOR of a proposal submitted to the Department of Education's division of teacher certification and preparation.

B. For public and private institutions of higher education, the proposal will include the following items:

1. official declaration of intent in the form of a letter from the head of the institution;

2. evidence of regional accreditation status (e.g. Southern Association of Colleges and Schools);

3. a narrative that follows state-approved guidelines, which are available from the Louisiana Department of Education or the Board of Regents. These guidelines include:

a. documentation describing general education classes (e.g., number of general education course hours by discipline and catalog course descriptions) according to Bulletin 746 and Title 17 of the Louisiana Revised Statutes, Sections 7.1 and 7.2;

b. documentation describing certification areas to be offered, with required courses to meet state certification requirements, according to Bulletin 746 and Title 17 of the Louisiana Revised Statutes, Sections 7.1 and 7.2.

c. evidence of collaboration with school districts, including a plan for development of an advisory board of community, district and university representatives. The written plan should describe how the council would be used and should name members and/or potential members;

d. evidence to show that the institution's governing structure will endorse and financially support a teacher and/or educational leader preparation unit and programs (e.g., budget detail showing funding sources);

e. documentation showing expertise of individuals directed to guide the unit and its programs (e.g., vitae of the dean or chair, department heads, director of field experiences, faculty, etc.);

f. an articulation agreement to transfer credit hours with another Louisiana-approved teacher and/or educational leader preparation institution that agrees to recommend the institution's candidates for certification, as needed, for continuous progress and program completion.

C. Upon BESE and BOR approval of the proposal, the institution is authorized, for a period of up to one year, to proceed with developing the teacher and/or educational

leader preparation unit and programs identified in the proposal, and to admit candidates to programs. This does not authorize the recommendation of graduates for certification.

D. External reviews of education programs by a team comprised of national consultants and Board of Regents and LDOE staff will be conducted to ensure adherence to guidelines developed and approved by LDOE and the Board of Regents.

E. The institution must apply for Level II approval within one year, or receive a one-year extension of Level I from BESE to address unforeseen circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2453 (November 2004), amended LR 35:2327 (November 2009).

§205. Level II Approval

A. Level II authorizes the institution to recommend candidates for certification, and begins with the joint review by the Louisiana Department of Education and Board of Regents and approval by BESE of the following items submitted to the LDOE's division of teacher certification and preparation:

1. a narrative describing the missions of the institution and the teacher and/or educational leader preparation program, reflecting that the program is an integrated and integral part of the university. The narrative should specify beliefs that drive the institution and unit and may include the knowledge bases from which these beliefs developed;

2. a written description of the professional education unit or education program that is primarily responsible for the preparation of teachers and other professional education personnel. This may be a chart or a narrative that specifies all professional education programs offered by the institution and degrees awarded for each program, and an organizational chart showing the professional education unit's or education program's relationship to other administrative units within the institution;

3. evidence that a dean, director, or chair is officially designated to represent the education unit or education program and has been assigned authority and responsibility for its overall administration and operation (e.g., a job description for the head of the professional education unit or education program);

4. evidence of written policies and procedures that guide education unit or education program operation, including policies or procedures pertaining to candidates. This may be submitted as hard copy (e.g., catalogs, handbooks) or as instructions for accessing a website;

5. a description of the education unit's or education program's system of monitoring and evaluating its candidates, programs, operations, and the performance of its graduates. This will reflect how the education unit or education program will assess programs, unit effectiveness, and candidates as well as how the education unit or education program will provide follow-up data on its graduates;

6. instrument(s) for assessing candidates for admission to and exit from the teacher and/or educational leader preparation program. This would include

requirements for entrance to teacher and/or educational leader preparation programs, through transition points, and for successful program completion as well as procedures for remediation, if necessary;

7. full budget report for the implementation of programs, including internal and external sources of funding, and including both hard and soft monies.

B. Level II must be completed within a period of one to three years. The BESE may grant only one extension, for a period of one year, when problems are identified that require solution prior to notification of intent to seek full state approval and national accreditation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2453 (November 2004), amended LR 33:2607 (December 2007), LR 35:2328 (November 2009).

§207. Level III Approval

A. Level III begins when the teacher and/or educational leader preparation program is notified by the accrediting agency that it is eligible for candidacy for national accreditation.

B. A copy of the verification from the national accrediting agency must be submitted to the Louisiana Department of Education's division of teacher certification and preparation.

C. Within three years or less from the time at which an institution is notified of eligibility for candidacy, the unit must host a joint visit with a national accreditation agency and state representatives. (See guidelines provided by state-approved national accrediting agencies, identified in §107 of this document.)

D. The institution remains in Level III until the accreditation process is complete.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2454 (November 2004), amended LR 33:2608 (December 2007), LR 35:2328 (November 2009).

§209. Level IV Approval

A. Level IV begins with notification of final accreditation by the national accrediting agency.

B. The LDOE's division of teacher certification and preparation receives notification of accreditation of the teacher and/or educational leader preparation program by the national accrediting agency. The LDOE will verify that the teacher and/or educational leader preparation program meets state standards and will forward this information to BESE for final state approval.

C. The BESE will notify the institution of final state approval.

D. The national accrediting agency defines the cycle for continued accreditation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:2454 (November 2004), amended LR 33:2608 (December 2007), LR 35:2328 (November 2009).

Chapter 3. Louisiana State Standards for Teacher Preparation Programs

§301. Introduction

A. Each teacher preparation program seeking approval from the Board of Elementary and Secondary Education (BESE) is required to incorporate and adhere to the NCATE standards or TEAC’s Principles and Standards and to track closely the NCATE or TEAC accreditation process. It is the responsibility of the teacher preparation program to prepare and present a clear description of how it is responding to each of the Louisiana Standards within the accreditation process.

B. The rubrics, as listed, develop a continuum of quality regarding a beginning teacher's ability to meet effectively the requirements of the five domains in *The Louisiana Components of Effective Teaching*. The integration of the Louisiana Content Standards is to be evidenced in the teacher education curricula of each teacher education unit. Each teacher education program must show evidence of integration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1733 (August 2002), amended LR 30:1622 (August 2004), LR 30:2456 (November 2004), LR 35:2329 (November 2009).

Chapter 4. The Components of Effective Teacher Preparation

Subchapter A. Standard A: Candidates Provide Effective Teaching for All Students

§401. Planning

A. Candidates at both the initial and advanced levels of the Teacher Education Program Provide Effective Instruction and Assessment for All Students

1. The teacher education program provides candidates¹ at both the initial and advanced levels with knowledge and skills in the following planning processes: specifying learner outcomes, developing appropriate activities which lead to the outcomes, planning for individual differences, identifying materials and media for instruction, specifying evaluation strategies for student achievement, and developing Individualized Education Plans (IEPs) as needed.

Unacceptable	Acceptable	Target
Candidates recognize the components of planning and know that they are expected to meet the learning needs of each student.	Candidates demonstrate knowledge of the steps in developing plans to meet the learning needs of each student.	Candidates develop and implement plans as needed to meet the learning needs of each student.

¹Candidates. Individuals admitted to or enrolled in programs for the First preparation of teachers. Candidates are distinguished from students in P-12 school.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004), LR 35:2329 (November 2009).

§403. Management

A. The teacher education program provides candidates at both the initial and advanced levels with knowledge and skills in the management component, which includes maintaining an environment conducive to learning, maximizing instructional time, and managing learner behavior.

Unacceptable	Acceptable	Target
Candidates understand various approaches to classroom/behavior management.	Candidates create a positive learning environment, maximize instructional time, and manage learner behavior.	Candidates create a positive learning environment, maximize instructional time, and manage learner behavior, making adjustments as necessary to meet the learning needs of each student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004), LR 35:2329 (November 2009).

§405. Instruction

A. The teacher education program provides candidates at both the initial and advanced levels with skills for delivering effective instruction, presenting appropriate content, providing for student involvement, and assessing and facilitating student growth.

Unacceptable	Acceptable	Target
Candidates recognize the components of instruction that meet the learning needs of each student.	Candidates demonstrate use of instructional components that meet the learning needs of each student.	Candidates demonstrate effective instruction that results in positive learning outcomes for each student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004), LR 35:2329 (November 2009).

§407. Curriculum

A. The teacher education curricula provide candidates at both the initial and advanced levels with knowledge and skills to effectively incorporate the Louisiana Content Standards and Grade Level Expectations in instructional delivery.

Unacceptable	Acceptable	Target
Candidates understand the basic components of the Louisiana Content Standards and Grade Level Expectations.	Candidates demonstrate knowledge of the Louisiana Content Standards and Grade Level Expectations in lessons for each content area they are preparing to teach.	Candidates implement instruction and assessment reflective of content standards, grade level expectations, local curricula, and each student's needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004), LR 31:2427 (October 2005), LR 35:2329 (November 2009).

§409. Curriculum—Reading (Specifically but not Exclusively for K-3 Teachers)

A. The teacher education program provides candidates at both the initial and advanced levels with knowledge and skills in the Louisiana Reading Competencies and the curriculum process.

Unacceptable	Acceptable	Target
Candidates understand the components of the Louisiana Reading Competencies.	Candidates utilize the Louisiana Reading Competencies in K-12 classrooms.	Candidates effectively utilize the Louisiana Reading Competencies in K-12 classrooms to impact learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1734 (August 2002), amended LR 30:2457 (November 2004), LR 31:2427 (October 2005), LR 35:2330 (November 2009).

§411. Curriculum—Mathematics (Specifically but not exclusively for K-3 teachers)

A. The teacher education program provides candidates at both the initial and advanced levels with knowledge and skills in the curriculum process.

Unacceptable	Acceptable	Target
Candidates understand the elements of reform mathematics.	Candidates use reform mathematics content and pedagogy in providing instruction.	Candidates effectively use reform mathematics content and pedagogy in instruction and assessment, including the use of manipulatives and/or the application of content to real life situations, resulting in improved student learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004), LR 35:2330 (November 2009).

§413. Technology

A. The teacher education program provides candidates at both initial and advanced levels with skills to plan and deliver instruction that integrates a variety of software, applications, and related technologies appropriate to the learning needs of each student.

Unacceptable	Acceptable	Target
Candidates understand how to use technology.	Candidates create and use instruction and assessment that integrate technology into the curriculum.	Candidates effectively integrate technology into the curriculum with instruction and assessment that result in improved student learning.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004), LR 35:2330 (November 2009).

§415. Professional Development

A. The teacher education program provides candidates at both the initial and advanced levels with information and skills for planning professional self-development.

Unacceptable	Acceptable	Target
No evidence exists that candidates were exposed to the need for ongoing professional development.	Candidates plan and pursue professional development activities required by the university and/or first employing school system.	Candidates develop an individualized professional development plan based upon their self-assessment, reflection, and long term professional goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004), LR 35:2330 (November 2009).

§417. School Improvement

A. The teacher education program provides candidates at both the initial and advanced levels with preparatory experiences in school improvement that includes taking an active role in school decision-making and creating relevant partnerships.

Unacceptable	Acceptable	Target
Candidates understand the processes of school improvement.	Candidates review and are familiar with school improvement efforts at the school and district levels.	Candidates participate in school improvement efforts by serving on committees and forming partnerships with community groups.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004), LR 35:2330 (November 2009).

Subchapter B. Standard B: Candidates and/or Graduates of Teacher Education Programs Participate in the Accountability and Testing Process

§419. School and District Accountability System

A. The teacher education program provides candidates at both the initial and advanced levels with knowledge and skills regarding the utilization of the Louisiana School and District Accountability System (LSDAS).

Unacceptable	Acceptable	Target
Candidates understand the basic components of the LSDAS.	Candidates investigate documents, data, and procedures used in LSDAS.	Candidates take an active role in the school growth process as related to the LSDAS.

RULE

Board of Elementary and Secondary Education

Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities (LAC 28:XCXVII.Chapters 1-9)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004), LR 35:2330 (November 2009).

§421. Testing

A. The teacher education program provides candidates at both the initial and advanced levels with information on the Louisiana Educational Assessment Program (LEAP 21) to enhance their testing and measurement practices related to learning and instruction.

Unacceptable	Acceptable	Target
Candidates understand the basic components of the Louisiana Educational Assessment Program (LEAP 21).	Candidates plan and implement instruction that correlates with LEAP 21.	Candidates interpret LEAP 21 test data and apply results to impact student achievement positively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1735 (August 2002), amended LR 30:2458 (November 2004), LR 35:2331 (November 2009).

Chapter 5. Identifications of Acronyms

§501. Acronyms

A. Listed below are the full identifications of acronyms used in this publication.

BESE—Board of Elementary and Secondary Education

BOR—Board of Regents

CHEA—Council for Higher Education

IEP—Individualized Education Plan

K-3—Kindergarten through 3rd grade

K-12—Kindergarten through 12th grade

LDOE—Louisiana Department of Education

LEAP 21—Louisiana Educational Assessment Program for the 21st century

LSDAS—Louisiana School and District Accountability System

NCATE—National Council for the Accreditation of Teacher Education.

P-12—Pre-kindergarten through 12th grades

TEAC—Teacher Education Accreditation Council

USDOE—U.S. Department of Education

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(10); R.S. 17:7(6), R.S. 17:7.2.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 28:1736 (August 2002), amended LR 30:2459 (November 2004), LR 35:2331 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#025

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities*. This document replaces in its entirety any previously advertised version and amends the title of the bulletin. *Louisiana's IEP Handbook for Students with Exceptionalities* outlines the legal procedures of the IEP process as mandated by the *Individuals with Disabilities Education Act (IDEA)* and R.S. 17:1941 et seq., and other regulations. The handbook provides information regarding the Individualized Education Program (IEP)—the basis for educational programming for students with exceptionalities in Louisiana. *Bulletin 1872, Extended School Year Program Handbook, and Bulletin 1891, Louisiana's IEP Handbook for Gifted/Talented Students*, will be repealed, and information from the bulletins has been integrated into the IEP Handbook.

Title 28

EDUCATION

Part XC VII. Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities

Chapter 1. Individualized Education Program (IEP) §101. Introduction

A. *Louisiana's IEP Handbook for Students with Exceptionalities* outlines the legal procedures of the IEP process as mandated by the *Individuals with Disabilities Education Act (IDEA)* and Revised Statute 17:1941, et seq., and their regulations. The handbook provides information regarding the Individualized Education Program (IEP)—the basis for educational programming for students with exceptionalities in Louisiana. *Bulletin 1872, Extended School Year Program Handbook, and Bulletin 1891, Louisiana's IEP Handbook for Gifted/Talented Students*, have been repealed, and information from the bulletins has been integrated into the IEP Handbook. The IEP, including the Gifted/Talented IEP and Services Plan for students parentally placed in private schools, shall be developed using a format approved by the Louisiana Department of Education (LDE).

B. The term *exceptionalities* used in this document includes all disabilities identified under IDEA, including gifted and/or talented as defined in state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2331 (November 2009).

§103. Free Appropriate Public Education (FAPE)

A. A student is initially determined to have an exceptionality through the full and individual initial evaluation process. The responsibility for making a formal commitment of resources to ensure a free appropriate public education (FAPE) for a student identified as exceptional rests with the local education agency (LEA) in which the student resides.

B.1. The LEA is responsible for initiating the assurance of FAPE regardless of whether the LEA will:

- a. provide all of the service directly or through interagency agreements; or
- b. place the student in another LEA or in a private school facility; or
- c. refer the student to another LEA for educational purposes.

2. This does not apply to students who are parentally placed in private schools.

C. The LEA is required to offer FAPE to those students with disabilities ages 3 through 21 years.

1. The child is eligible for FAPE on his 3rd birthday.
2. The responsibility for providing services to a student identified as exceptional continues until:
 - a. the student receives a state diploma; or
 - b. the student reaches his or her 22nd birthday.

When the 22nd birthday occurs during the course of the regular school session, and all action steps in the transition plan have not been completed, the student should be allowed to remain in school for the remainder of the school year.

D. The LEA is not responsible for providing FAPE when, after carefully documenting that the agency has offered FAPE via an IEP, the parents choose to voluntarily enroll the student elsewhere or indicate their refusal of special educational services. Documentation of these parental decisions should be kept on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2332 (November 2009).

§105. Timelines

A. An initial evaluation is considered "completed" when the written report has been disseminated by the pupil appraisal staff to the administrator of special education programs. A LEA has a maximum of 30 calendar days to complete the IEP/placement document for an eligible student. During this time, two activities shall take place and be documented.

1. Written Notice. Written notice that the LEA proposes to provide FAPE through the IEP process shall be given to the parents.

a. The notice shall be provided in the parents' native language or shall be given using other means of communication, whenever necessary, to ensure parental understanding.

b. The notice shall indicate the purpose, time, and location of the IEP Team meeting; who will be in attendance; when a LEA IEP Team member needs to be excused from attending the meeting; the parents' right to take other participants to the meeting; the student's right to participate (when appropriate); and the name of the person in the LEA the parents can contact when they have questions or concerns.

c. The notice shall explain the procedural safeguards available to the parents; that they can negotiate the time and place of the IEP Team meeting; that they have the right to full and meaningful participation in the IEP decision-making process, know their consent is required before initial placement will be made and that all information about the student shall be kept confidential.

d. When it appears that a student with a disability may be eligible to participate in one of the alternate assessments, the notice shall explain that data appear to support the student's participation in alternate assessment, and that the decision for participation will be made with the parents at the IEP Team meeting.

e. Additionally, when the LEA has not already done so, the parents shall be informed of their right to an oral explanation of the evaluation report and of their right to an independent education evaluation (IEE) when the parents disagree with the current evaluation.

f. In the case of a child who was previously served under Part C, an invitation to the initial IEP Team meeting, at the request of the parent, will be sent to the Part C service coordinator or other representative of the Part C system to assist with the smooth transition of services. This only pertains to students with disabilities.

2. An IEP Team meeting that result in a completed IEP/placement document shall be held. This meeting should be a vehicle for communication between parents and school personnel to share formal and informal information about the student's needs, educational projections, and services that will be provided to meet the student's needs. The completed IEP/placement document is a formal record of the IEP Team's decisions. The timeline for completion of the document is intended to ensure that there is no undue delay in providing a free appropriate public education (FAPE) for the student. The IEP form is considered official when the parent and the Official Designated Representative (ODR) sign the document.

a. The IEP Team should consider parental correspondence to the school regarding the student's learning environment, any notes from previous parental conferences, and any data gathered during the screening and evaluation period in the development of the IEP.

b. Implementation of the IEP means that the student begins participating in special education and related services as written on the IEP/placement document. A LEA shall begin providing services as stated on the IEP as soon as possible but no later than ten (10) school days. The date of initiation of services shall be noted on the IEP.

B. Additional Notes about Timelines

1. Summer Recess. When an initial evaluation report has been completed within the 30 days prior to the summer recess or during the recess, the LEA may request, through written documentation, parental approval to delay the initial IEP Team meeting until the first week of the next school session. However, when the parents wish to meet during the summer recess, the LEA shall ensure that the appropriate IEP Team members are present.

2. Children with Disabilities Approaching Age 3

a. Children with disabilities receiving Part C services (EarlySteps) who are "turning three-years-old" suspected of being eligible for Part B services shall be referred to the LEA when the child is 2 years, 2 months

through 2 years, 9 months of age. The Part C Family Service Coordinator will notify the LEA of the date for the transition meeting to determine whether the student shall be evaluated for Part B services. The LEA will begin the evaluation process to determine eligibility. When the child meets eligibility criteria according to *Bulletin 1508, Pupil Appraisal Handbook*, the IEP Team must develop and implement the IEP by the child's third birthday.

b. If the child's birthday occurs during the summer months, the child's IEP team will determine the date when services will begin. Services shall begin no later than the start of the next school year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2332 (November 2009).

§107. IEP Team Participants

A. At any IEP Team meeting, the following participants shall be in attendance: an officially designated representative of the LEA, the student's regular education and special education teachers, the student's parents, and a person knowledgeable about the student's evaluation procedures and results. The student, as well as other individuals the parents and/or LEA may deem necessary, should be given the opportunity to attend. Documentation of attendance is required.

1. An officially designated representative (ODR) of the LEA is one who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with exceptionalities, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the LEA. The LEA may also designate another LEA member of the IEP Team to serve as the agency representative, when the above criteria are satisfied. A LEA shall have on file and shall disseminate within the agency a policy statement naming the kinds of persons who may act as the official representative of the LEA. Representatives may include the director/supervisor of special education, principals, instructional strategists, teachers, or any other LEA employee certified to provide or supervise special educational services. A member of the student's evaluation team may serve in this capacity. A special education teacher may not serve as the ODR for a student's IEP when he or she is also the student's teacher.

2. Parents are equal participants in the IEP process in discussing the educational and related services needs of the student and in deciding which placement and other services are appropriate. As such, one or both of the student's parents should participate in the initial IEP/placement meeting(s). Other team members shall rely on parents to contribute their perspective of the student outside of school. Parental insight about the student's strengths and support needs, learning style, temperament, ability to work in various environments, and acquired adaptive skills is of vital importance to the team in making decisions about the student's needs and services. The concerns of the parents for enhancing the education of their child shall be documented in the IEP.

a. Parent is defined as a biological or adoptive parent of a child; a foster parent; a guardian, generally authorized to act as the child's parent or authorized to make educational decisions for the child, but not the state if the

child is a ward of the state; an individual acting in the place of a biological or adoptive parent of a child (including a grandparent, stepparent, or other relative) with whom the child lives or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed to act in the child's behalf.

b. The LEA shall take measures to ensure that parents and all other team members, including sensorially impaired and non-English-speaking participants, can understand and actively participate in discussions and decision-making. These measures (i.e., having an interpreter or translator) should be documented. LEAs shall further ensure that, for those parents who cannot physically attend the IEP Team meetings, every effort is made to secure parental participation.

c. However, if every documented attempt fails and the IEP/placement document is developed without parental participation, the parents still shall give written informed consent for initial placement before any special education or related services may begin.

i. When conducting IEP Team/placement meetings, the parents of a student with an exceptionality and the LEA may agree to use alternative means of meeting participation such as videoconferences and conference calls.

ii. Visits may be made to the parents' home or place of employment to receive parental suggestions.

iii. Electronic mail. A parent of a student with an exceptionality may elect to receive notices/communication by electronic mail communication, if the LEA makes that option available. Documentation of these communiqués should be kept in the student's IEP folder.

d. When a student with an exceptionality has a legal guardian or has been assigned a surrogate parent by the LEA, that person assumes the role of the parent during the IEP process in matters dealing with special educational services. When a student with an exceptionality is emancipated, parental participation is not mandated. Additionally, when the LEA has been informed that a parent is legally prohibited from reviewing a student's records, that parent may not attend the IEP Team meetings without permission of the legal guardian.

e. Beginning at least one year before the student reaches the age of majority, by the student's seventeenth birthday; the parents will be informed that the rights under Part B of the Act will transfer to the student, unless the student is determined incompetent under state law.

3. An evaluation representative is a required participant at an initial IEP Team meeting. The person may be a member of the pupil appraisal team that performed the evaluation or any person knowledgeable about and able to interpret the evaluation data for that particular student. The evaluation coordinator who coordinated the activities for the reevaluation shall be present at the next scheduled IEP Team meeting when there is a change in classification, or initiation of additional services, or more restrictive environment is proposed for the student. For gifted and/or talented reevaluations, the gifted or talented teacher may serve as the evaluation coordinator.

4. A regular education teacher is at least one of the student's regular teachers (when the student is, or may be, participating in the regular education environment). The teacher must, to the extent appropriate, participate in the

development, review, and revision of the student's IEP, including the determination of accommodations, appropriate positive behavioral interventions, supports and other strategies, the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student.

5. A special education teacher is at least one of the student's special education teachers, or when appropriate, at least one special education provider of the student.

a. When a student's only disability is speech or language impairment, then the speech/language pathologist is considered the special education provider.

6. The student should be given the opportunity to participate in the development of the IEP. In many cases, the student will share responsibility for goals and objectives.

a. The LEA shall invite a student with a disability at any age to attend his or her IEP Team meeting if the purpose of the meeting will be the consideration of postsecondary goals and the transition services needed in reaching those goals. The LEA shall invite the student and, as part of the notification to the parents of the IEP Team meeting, inform the parents that the LEA will invite the student to the meeting.

b. Beginning at least one year before the student reaches the age of majority, by the student's seventeenth birthday, the student shall be informed that his or her rights under Part B of the Act will transfer to him or her unless he or she has been determined incompetent under state law.

7. Other individuals can be invited, at the discretion of the parent or LEA, who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The LEA also shall inform the parents of the right of both the parents and the agency to invite other individuals who have knowledge or special expertise regarding the child, including related service personnel as appropriate to be members of the IEP Team. The LEA may recommend the participation of other persons when their involvement will assist in the decision-making process.

a. It is also appropriate for the agency to ask the parents to inform the agency of any individuals the parents will be inviting to the meeting. Parents are encouraged to let the agency know whom they intend to invite. Such cooperation can facilitate arrangements for the meeting and help ensure a productive, child-centered meeting.

b. The determination of the knowledge or special expertise of any individual described above shall be made by the parent or LEA who invited the individual to be a member of the IEP Team.

c. When the LEA responsible for the initial IEP/placement process considers referring or placing the student in another LEA, the responsible LEA must ensure the participation of a representative of the receiving LEA at the IEP Team meeting.

d. The LEA shall ensure the attendance of a representative of a private school when the student is voluntarily enrolled in a private school. When the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individualized or conference telephone calls.

B. IEP Team Member Excusal

1. A member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, when the parent of the student with an exceptionality and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, when:

a. the parent, in writing, and the public agency consent to the excusal; and

b. the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2332 (November 2009).

§109. Accessibility of the Student's IEP

A. The student's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation, and

1. Each teacher and provider is informed of

a. his or her specific responsibilities related to implementing the student's IEP; and

b. the specific accommodations, modifications, and supports that shall be provided for the student in accordance with the IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2334 (November 2009).

§111. The Three Types of IEPs for Students with Exceptionalities

A. The *Initial IEP* is developed for a student with an exceptionality who has met criteria for one or more exceptionalities outlined in *Bulletin 1508, Pupil Appraisal Handbook* and who has never received special educational services, except through an interim IEP, from an approved Louisiana school/program.

B. The *Review IEP* is reviewed and revised at least annually or more frequently to consider the appropriateness of the program, placement, progress in the general education curriculum and any related services needed by the student.

C. The *Interim IEP* shall be developed for students who have severe or low incidence impairments documented by a qualified professional concurrent with the conduct of an initial evaluation according to *Bulletin 1508, Pupil Appraisal Handbook*.

1. An interim IEP may also be developed for students who have been receiving special educational services in another state concurrent with the conduct of an initial evaluation.

2. An interim IEP may also be developed concurrent with the conduct of an initial evaluation for a student out-of-school, including students ages three- through- five, who are suspected of having a disability and for former special education students, through the age of twenty-two, who have left a public school without completing their public education by obtaining a state diploma.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2334 (November 2009).

§113. IEP Amendments

A. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student with a disability and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may amend or modify the student's current IEP.

1. Procedural safeguards for reconvening the IEP Team meeting shall be followed.

2. If changes are made to the student's IEP, the LEA must ensure that the student's IEP Team is informed of those changes.

3. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting or by amending the IEP rather than by redrafting the entire IEP.

4. A parent must be provided with a revised copy of the IEP with the amendments incorporated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2335 (November 2009).

§115. Placement Considerations

A. The IEP Team, following a discussion of the student's educational needs, shall choose a setting in which the educational needs will be addressed. The official designated representative shall be knowledgeable about placement considerations and shall be responsible for informing the IEP Team members. The IEP Team, including the parent, shall participate in discussions and decisions made about the placement. The term placement refers to the setting or class in which the student will receive special educational services.

B. Placement Considerations for Students with Disabilities whose ages are 6-21.

1. For the location of instruction/services, IEP Team members should consider the following.

a. Where would the student attend school if he or she did not have a disability?

b. Has the student, as a special education student, ever received special educational instruction or services within the general education environment?

c. What accommodations and/or modifications have been used to support the student as a special education student in the general education class?

d. After a review of the accommodations and/or modifications provided, what additional strategies and supports have been determined to facilitate the student's success in the general education setting?

e. When the student is not currently receiving instruction and/or services in a general education setting,

what strategies could be used for providing services in the general education classroom?

f. Based on IEP goals and/or objectives/benchmarks, what instructional settings would support the achievement of these goals and/or objectives/benchmarks?

g. When the decision has been made to provide the student with instruction and/or services outside the general education setting, what specific opportunities will the student have for integration in general education activities?

C. Placement Considerations for Students with Disabilities whose ages are 3-5.

1. For the location of instruction/services, the IEP Team should consider the following.

a. Where would the student spend the majority of the day if the student did not have a disability (natural environment)?

b. Can the services identified on the IEP be provided in the student's natural environment?

i. If not, what changes should be made in that environment to enable the required services to be delivered there?

ii. If not, what programming and/or placements/services options are necessary to meet the student's identified needs while providing meaningful opportunities for interactions with peers without disabilities?

c. What accommodations, supports, and/or related services are needed to meet the student's identified needs?

D. Placement Considerations for Students who are Gifted and/or Talented whose ages are 3-21.

1. For the location of instruction/services, IEP Team members should consider the following.

a. Where the student would attend school if he or she did not have an exceptionality?

b. Based on IEP goals, what instructional settings would support the achievement of these goals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2335 (November 2009).

§117. Placement/Least Restrictive Educational Environments

A. For Students with Exceptionalities ages 6-21. The Educational Environments are listed below in a continuum from least to most restrictive. This list is not a continuum of least restrictive environment for the deaf or hard-of-hearing students. The list should not be considered a continuum of least restrictive environment for students receiving gifted and talented services.

1. Inside the regular class 80 percent or more of the day

a. A regular class with special education/related services provided within regular classes; a regular class with special education/related services provided outside regular classes; or a regular class with special education services provided in resource rooms.

2. Inside regular class no more than 79 percent of day and no less than 40 percent of the day

a. Resource rooms with special education/related services provided within the resource room; or resource rooms with part-time instruction in a regular class.

3. Inside regular class less than 40 percent of the day
 - a. Self-contained special classrooms with part-time instruction provided in a regular class, or a self-contained special classroom with full-time special education instruction on a regular school campus.

4. Separate school

- a. Public and private day schools for students with disabilities; public and private day schools for students with disabilities for a portion of the school day (greater than 50 percent) and in regular school buildings for the remainder of the school day; or public and private residential facilities when the student does not live at the facility.

5. Residential Facility

- a. Public and private residential schools for students with disabilities; or public and private residential schools for students with disabilities for a portion of the school day (greater than 50 percent) and in separate day schools or regular school buildings for the remainder of the school day.

6. Hospital/homebound

- a. Hospital programs or homebound programs—students should be receiving a minimum of 4 hours of services per week. Refer to Bulletin 741, §1103 for more information.

7. Correctional Facilities

- a. Short-term detention facilities (community-based or residential); or correctional facilities

B. For Students with Exceptionalities ages 3-5. In determining the appropriate setting for a preschool-aged student, each setting noted shall be considered; but the list should not be considered a continuum of least restrictive environment. The settings for preschool-aged students, three through five years, are defined as follows.

1. For Students with Disabilities ages 3-5.

- a. In the regular early childhood program at least 80 percent of time

- b. In the regular early childhood program 40% to 79 percent of time

- c. In the regular early childhood program less than 40 percent time

- i. Early childhood programs include, but are not limited to Head Start, kindergarten, reverse mainstream classrooms, private preschools, and preschool classes offered to an eligible pre-kindergarten population by the LEA; and group child care (e.g., Starting Points, LA 4)

- d. In early childhood special education - separate class

- i. Attends a special education program in a class that includes less than 50% nondisabled children. Special education programs include, but are not limited to special education and related services provided in special education classrooms in regular school buildings; trailers or portables outside regular school buildings; child care facilities; hospital facilities on an outpatient basis; and other community-based settings.

- e. In early childhood special education - separate school

- i. Receives special education in a public or private day school designed specially for children with disabilities

- f. In early childhood special education—residential facility

- i. Receives special education in a public or privately operated residential school or residential medical facility on an inpatient basis

- g. Receiving special education and related services at home

- i. When the child does not attend a regular early childhood program or special education program, but the child receives some or all of his/her special education services in the home. Children who receive special education both in a service provider location and at home should be reported in the home category.

- h. Receiving special education and related services at service provider location

- i. When the child receives all of their special education and related services from a service provider and does not attend an early childhood program or a special education program provided in a separate class, separate school, or residential facilities. For example, speech therapy is provided in private clinicians' offices; clinicians' offices located in school buildings; hospital facilities on an outpatient basis, and libraries and other public locations

2. For Students who are Gifted and/or Talented ages 3-5.

- a. In the regular early childhood program at least 80 percent of time

- b. In the regular early childhood program 40% to 79 percent of time

- c. In the regular early childhood program less than 40 percent time

- i. Early childhood programs include, but are not limited to Head Start, kindergarten, preschool classes offered to an eligible pre-kindergarten population by the local education agency; and group child care (e.g., Starting Points, LA 4)

- d. In early childhood special education - separate class

- i. Attends a special education program in a class that includes less than 50 percent nondisabled children. Special education programs include, but are not limited to special education and related services provided in special education classrooms in regular school buildings; trailers or portables outside regular school buildings, and child care facilities.

- e. In early childhood special education - residential facility

- i. Attends a public or privately operated residential school or residential medical facility on an inpatient basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2335 (November 2009).

§119. Parental Consent

A. A LEA shall obtain formal parental and/or student consent before it can initially provide a student with special education and related services in any setting.

1. The student's consent is needed once the student reaches the age of majority, which is age eighteen (18) in Louisiana. When a student reaches the age of majority that applies to all students, except for a student who has been

determined to be incompetent under state law, the student shall be afforded those rights guaranteed at such age.

B. Consent includes the following:

1. the parent and/or student has been fully informed of all relevant information in a manner that is clearly understandable to the parent and/or student, and

2. the parent and/or student formally agree in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2336 (November 2009).

§121. Parental Disagreement with Provision of Services/Placement

A. Parents may disagree with all or some parts of the program, placement, or related services proposals. The LEA and the parents should make conciliatory attempts to resolve the disputes, including making modifications to the proposed program, placement, and related services. A LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2337 (November 2009).

§123. Parental Withholding of Consent

A. When the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the LEA:

1. may not use the procedures in *Bulletin 1706*, Chapter 5 (including the mediation procedures under §506 or the due process procedures under §508-§517) in order to obtain agreement or a ruling that the services may be provided to a student;

2. will not be considered to be in violation of the requirement to make FAPE available to the student for the failure to provide the student with the special education and related services for which the public agency requests consent; and

3. is not required to convene an IEP Team meeting or develop an IEP for the student for the special education and related services for which the public agency requests such consent.

B. If, at any time after the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services the LEA:

1. may not continue to provide special education and related services to the student, but must provide prior written notice in accordance with *Bulletin 1706* before ceasing the provision of special education and related services;

2. may not use the procedures in *Bulletin 1706*, Chapter 5 (including the mediation procedures under §506 or the due process procedures under §508-§517) in order to obtain agreement or a ruling that the services may be provided to a student;

3. will not be considered to be in violation of the requirement to make FAPE available to the student because

of the failure to provide the student with further special education and related services; and

4. is not required to convene an IEP Team meeting or develop an IEP for the student for further provision of special education and related services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2337 (November 2009).

§125. Dispute Resolution Options

A. The LDE has adopted written procedures regarding the resolution of any complaint related to the identification, evaluation, educational placement, the level of services or placement, the provision of a free appropriate public education (FAPE) or payment for services that the parent has obtained for a student with a disability. The *Parent's Guide to Special Education Dispute Resolution* is designed to assist parents in understanding the Louisiana dispute resolution systems. The guide can be located at www.doe.state.la.us/lde/eia/2114.html.

B. IEP Facilitation is a new dispute resolution method. This option is available to parents and school districts when they both agree that it would be valuable to have a neutral person (IEP Facilitator) present at an IEP Team meeting to assist them in discussing issues regarding the IEP. Typically, an IEP Facilitator is brought in when parents and school district staff are having difficulties communicating with one another about what the student needs.

C. Informal Complaints/Early Resolution Procedures (ERP). It is the policy of the LDE to encourage and support prompt and effective resolution of any administrative complaint in the least adversarial manner possible. The implementation of the ERP by each LEA draws on the traditional model of parents and schools working cooperatively in the educational interest of the students to achieve their shared goal of meeting the educational needs of students with disabilities.

1. Formal administrative complaints are procedures developed under the supervisory jurisdiction of LDE to address allegations that an LEA is violating a requirement of Part B of the Act.

D. *Mediation* is an informal, voluntary process by which the parent and the LEA are given an opportunity, through the help of a trained mediator, to resolve their differences and find solutions to enhance the overall learning environment for the student. Differences may arise in the planning and implementing of an individualized educational program for a student with an exceptionality. It is important for parents and LEAs to have an opportunity to present their viewpoint in a dispute. See *Louisiana's Educational Rights of Children with Disabilities Handbook* or *Louisiana's Educational Rights of Gifted/Talented Children in Public Schools* and the *Mediation Services for Students with Exceptionalities* brochure for more information.

E. The parents and the LEA both have the right to an "impartial due process hearing" when disagreements arise between the parent and the LEA, relative to initiating or changing the identification, evaluation, or educational services and placement of a student with an exceptionality. Due process hearings may be initiated by the parent or the LEA. See *Louisiana's Educational Rights of Children with*

Disabilities Handbook or *Louisiana's Educational Rights of Gifted/Talented Children in Public Schools* and the *Special Education Impartial Due Process Hearing* brochure for more information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2337 (November 2009).

§127. Three-Year Age Span

A. Unless specifically permitted by the State Board of Elementary and Secondary Education, there shall not be a chronological age span of more than three years within a special education class.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2338 (November 2009).

§129. Site Determination

A. When the site at which the student will receive services is not determined at the IEP Team meeting, within 10 calendar days, the site determination form shall be completed. The LEA has the right to select the actual school site at which the student will receive services.

B. In addition to the questions on the IEP and Site Determination Form, the following issues shall be considered:

1. students should be placed in programs on the basis of their unique special education needs, not as a result of their particular disabling condition; and

2. placement cannot be based either on a particular LEA's special education delivery system or on the availability of related services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2338 (November 2009).

§131. Additional Clarification

A. Although throughout Louisiana most students with exceptionalities are served in their neighborhood schools there are some extenuating circumstances that influence the decision to serve a student in a school other than his or her neighborhood school.

B. For Students with Disabilities. The following is provided as an example: In a small LEA, there may be only four multidisabled students who need a multidisabled self-contained class. The LEA may establish one classroom within the LEA. Those multidisabled students could be grouped together on a centrally located campus as age-appropriate as possible. Because of the limited number of students, the age span may be greater than the 3-year span. In this situation, ages may be from 10-14 years—with two children being 10-years-old, one being 11, and one being 14. When the administration decides to locate this class on an elementary K-6 campus because the majority of the class is of elementary age, there could be adequate justification to allow the 14-year-old to remain on the elementary campus. This placement is not a desirable situation, but a necessity in some cases.

C. For Students who are Gifted and/or Talented. The following is provided as an example: A Resource Center for Gifted/Talented is a type of instructional setting, designed or

located in one school, that provides instructional services to students who are gifted/talented from two or more schools and in which special education is provided by an individual certified in accordance with *Bulletin 746*; pupil/teacher ratios established in *Bulletin 1706, Part B*, are used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2338 (November 2009).

Chapter 3. IEP Development

§301. Responsibilities

A. The responsibility for offering FAPE is met through the process of developing an IEP. This process includes:

1. communication between the LEA and the parents;

2. IEP Team meetings at which parents and school personnel make joint decisions and resolve any differences about the student's needs and services;

3. a completed IEP/placement document, which describes the decisions made during the meetings, including the special education and related services that are to be provided;

4. a formal assurance by the LEA that the services described in the document will be provided;

5. written parental consent for initial placement;

6. procedural safeguards for differences that cannot be resolved mutually;

7. initial placement and provision of services as described in the IEP/ placement document; and

8. consideration and/or determination of eligibility for Extended school year (ESY) services for students with disabilities. Refer to ESY section of this handbook (Chapter 7) for further guidance.

B. The IEP Team has the responsibility for determining the student's special educational and related services needs and placement.

C. A student dually identified with a disability and gifted and/or talented shall have his/her individualized educational program developed on the IEP for students with a disability.

D. A LEA is required to initiate and conduct IEP Team meetings periodically, but not less than annually, to review each student's IEP in order to determine whether the annual goals for the student are being achieved and to revise the IEP as appropriate. The LEA shall notify parents of the review IEP Team meeting in accordance with the same procedures as the initial IEP.

E. An additional IEP/placement review meeting is not required when a LEA elects to move the student to another school site within the agency when all of the information on the IEP remains the same and the effect of the program has not been changed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2338 (November 2009).

§303. Initial IEPs

A. Program Considerations for Students with Disabilities. Program decisions shall be made and written on the IEP in the following areas that form the basis for the placement.

1. General information about the student, including

2. the student's strengths; and

3. the concerns of the parents for enhancing the education of their child; and

4. the results of the initial evaluation or most recent reevaluation of the student; and

5. the student's present levels of academic achievement, developmental, and functional needs; and

a. how the student's disability affects the student's involvement and progress in the general education curriculum; and

b. how to determine when the student with a disability needs instructional materials in accessible formats (e.g., large print, Braille, digital, and/or audio); and

c. for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities; and

6. as appropriate, the results of the student's performance on any general state- or district-wide assessment program.

7. The IEP Team shall also consider any of the following special factors:

a. for a student whose behaviors impede his or her learning or that of others, consider the use of positive behavioral intervention and supports, and other supports to address that behavior;

b. for a student with limited English proficiency, consider the language needs of the student as those needs relate to the student's IEP;

c. for a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;

d. the communication needs of the student, and in the case of a student who is deaf or hard-of-hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and a full range of needs, including opportunities for direct instruction in the student's language and communication mode;

e. whether the student requires assistive technology devices and services based on assessment/evaluation results;

f. for a student who has health problems, the needs to be met during the school day. These needs would include such medical conditions as asthma, diabetes, seizures, or other diseases/disorders that may require lifting and positioning, diapering, assistance with meals, special diets, or other health needs.

8. The measurable annual academic and functional goals, designed to meet the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum,

a. shall be based on the academic standards for the grade in which the student is enrolled; and

b. shall be based on each of the student's other educational needs that result from the student's disability; and

c. short-term objectives/benchmarks shall be required for students with significant cognitive disabilities or

functions like a student with significant cognitive disabilities at all ages and grade levels, including preschool-aged students;

i. short-term objectives/benchmarks shall be required for students who participate in LAA 1 (the alternate assessment aligned to alternate achievement standards);

ii. IEP Teams may continue to develop short-term instructional objectives or develop benchmarks that should be thought of as describing the amount of progress the student is expected to make within a specified segment of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress to coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP Team may use either short-term objectives or a combination of the two, depending on the nature of the annual goals and needs of the child.

d. The participation in appropriate activities for the preschool-aged student.

9. The special educational and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and the program modifications or supports for school personnel will be provided for the student

a. to advance appropriately toward attaining the measurable annual goals; and

b. to be involved and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

c. to be educated and participate with other students with and without disabilities in the activities.

10. An explanation is given to the extent in which the student will not participate with students without disabilities in the regular class and extracurricular and other nonacademic activities.

11. The participation in the annual statewide assessment for the student in grades 3-11; and

a. the need for any individual accommodations in the administration of state- or district-wide assessments of academic achievement; and

b. when the IEP Team determines the student shall participate in an alternate assessment instead of the regular statewide assessment, a statement of why

i. the student cannot participate in the regular assessment; and

ii. the particular assessment selected as appropriate for the student.

12. The anticipated frequency, location, and duration of the special educational services and modifications.

13. The type of physical education program to be provided.

14. For each student beginning at age 16, transition service needs that focus on the student's courses of study; and

a. for each student not later than the first IEP to be in effect when the child turns 16, or younger, when determined appropriate by the IEP Team, and updated annually thereafter, the needed transition services including any interagency responsibilities or linkages.

15. The need for extended school year services (refer to Chapter 7) based on student performance on academic/functional goals and/or objectives/ benchmarks.

a. The IEP Team will consider the criterion/criteria to make the ESY determination and what data must be collected to make that decision. The data collected through progress monitoring (e.g., grades, progress reports, behavior checklists, task analyses, teacher observation logs, etc.) shall be reviewed to determine the progress the student makes toward acquisition of the measurable annual goals and/or objectives/benchmarks, and whether the data supports that, the student meets any of the criteria for ESY eligibility.

B. Program Considerations for Students who are Gifted and/or Talented. Program decisions shall be made and written on the Gifted/Talented IEP in the following areas that form the basis for the placement.

1. General information about the student, including student interests; and

a. in the case of a student with limited English proficiency, whose language needs relate to the student's IEP;

2. the student's strengths;

3. the concerns of the parents for enhancing the education of their child;

4. as appropriate, the results of the student's performance on any general state- or district-wide assessment program for students in grades 3 -11;

5. the results of the initial evaluation or most recent reevaluation of the student;

6. input from the regular education teacher regarding student classroom performance, including academic achievement and social skills;

7. any pertinent social and emotional needs;

8. the student's present levels of educational performance, including the student's academic achievement and social/emotional needs;

9. the measurable annual academic and/or enrichment and/or social goals;

a. meeting the student's needs that result from the student's exceptionality and progress in an accelerated and enriched curriculum, and

b. meeting each of the student's other educational needs that result from

the student's exceptionality, and

i. in the case of a student whose behaviors impede his or her learning or that of others, consider the use of positive behavioral intervention strategies and other supports to address that behavior;

c. the participation in appropriate activities for the preschool-aged student;

10. the related services, which may include transportation and counseling;

11. the accommodations needed for instructional and statewide assessment purposes must be documented on the *Section 504 Individual Accommodation Plan* (IAP). A copy of the IAP should be kept in the student's IEP folder;

12. and the anticipated frequency, location, and duration of the special education services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2338 (November 2009).

§305. Review IEPs

A. Program Considerations for Students with Disabilities. The IEP Team shall review and revise the IEP for students with disabilities to address:

1. any lack of expected progress toward achieving the annual goals and objectives/benchmarks;

2. any lack of expected progress in the general education curriculum (e.g., the student is making failing grades or through progress monitoring the student's lack of progress in the general education curriculum is evident);

3. the results of the student's performance on any state- or district-wide assessment;

4. the results of any reevaluation;

a. for any additional concerns, the procedures for evaluation established in *Bulletin 1508, Pupil Appraisal Handbook* shall be followed; and

b. in the event the parent signs the triennial reevaluation waiver, a statement must be included on the next IEP.

c. in the event the results of the reevaluation indicate *no exceptionality*, an IEP will not be developed and special education and related services cease;

5. information about the child shall be provided to, or by, the parents;

6. the student's anticipated needs;

7. the student's special educational and related service needs; for the preschool-aged child, his or her developmental needs shall be addressed;

a. to determine when the student with a disability needs instructional materials in assessable formats (e.g., Braille, large print, digital, and/or audio);

8. any positive behavior interventions and strategies that should be used, as needed;

9. updated decisions about the student's program, placement, and related services;

10. consideration of special factors as listed in §303.A.6.a-f;

11. for each student beginning at age 16, discuss transition service needs that focus on the student's courses of study;

a. for each student beginning not later than the first IEP to be in effect when the student turns 16, discuss the needed transition services including any interagency responsibilities or linkages;

12. consideration of location of instruction/services, refer to §115-117.

13. the need for extended school year services. This need shall be based on student performance on academic/functional goals and/or objectives/ benchmarks. Refer to the ESY section of this handbook (Chapter 7).

a. The IEP Team will consider the criterion/criteria to make the ESY determination and what data must be collected to make that decision. The data collected through progress monitoring (e.g., grades, progress reports, behavior checklists, task analyses, teacher observation logs, etc.) shall be reviewed to determine the progress the student makes toward acquisition of his or her goals, and/or objectives/benchmarks, and whether the student's progress meets any of the criteria for ESY eligibility.

14. Discuss any other matters.

B. A review meeting shall be conducted in addition to the required annual review when

1. the student's teacher feels the student's IEP or placement is not appropriate for the student; or

2. the student's parents believe their child is not progressing satisfactorily in the general education curriculum or that there is a problem with the student's IEP;

3. the LEA proposes any changes regarding program or placement, such as to modify, add, or delete a goal or objective; to add or delete a related service;

4. the student has been determined to be eligible for ESY and will receive ESY services;

5. the behavior of the student warrants a review by the IEP Team to decide on strategies including positive behavioral intervention, strategies, and supports to address the behavior;

6. either a parent or a public agency believes that a required component of the student's IEP should be changed;

7. the LEA determines that a change in the IEP may be necessary to ensure the provision of FAPE;

a. a hearing officer orders a review of the student's IEP/placement document;

8. in the case in which the IEP/placement document is entirely rewritten, the date of that meeting shall become the anniversary date for the next annual review meeting.

C. Program considerations for Students who are Gifted and Talented. The IEP Team shall review and revise the IEP for students who are gifted and talented to address:

1. any lack of expected progress toward achieving the annual goals;

2. any lack of expected progress in the general education curriculum;

3. the results of the student's performance on any state- or district-wide assessment;

4. the results of any reevaluation;

a. for any additional concerns, the procedures for evaluation established in *Bulletin 1508, Pupil Appraisal Handbook* shall be followed;

b. in the event the results of the reevaluation indicates *no exceptionality*, an IEP will not be developed and gifted and/or talented services cease;

5. information about the student provided to, or by, the parents;

6. the student's anticipated needs;

7. the student's special educational needs; for the preschool-aged child, address his or her developmental needs;

8. any positive behavior interventions and strategies that should be used, as needed;

9. updated decisions about the student's program and placement;

10. in making decisions for location of instruction/services, refer to §115-117;

11. any other concerns.

D. A review meeting shall be conducted in addition to the required annual review when:

1. a student's teacher feels the student's IEP or placement is not appropriate for the student; or

2. the student's parents believe their child is not progressing satisfactorily or that there is a problem with the student's IEP; or

3. the LEA proposes any changes regarding program or placement, such as to modify, add, or delete a goal; to add or delete a related service; or

4. either a parent or a public agency believes that a required component of the student's IEP should be changed; or

5. the LEA determines that a change in the IEP may be necessary to ensure the provision of FAPE; or

a. a hearing officer orders a review of the student's IEP/placement document; and

b. a review IEP Team meeting shall be conducted as part of the reevaluation process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2340 (November 2009).

§307. Interim IEPs

A. Placement Decisions. Local directors/supervisors of special education may approve enrollment in special education after pupil appraisal personnel have reviewed existing student information.

1. An interim IEP may be developed for students transferring from out-of-state who were receiving special educational services, concurrent with the conduct of an initial evaluation according to the *Bulletin 1508, Pupil Appraisal Handbook*.

2. An interim IEP may be developed concurrent with the conduct of an initial evaluation for students out of school, including students ages three-through-five who are suspected of having a disability, and for former special education students, through the age of twenty-two, who have left a public school without completing their public education by obtaining a state diploma.

3. Formal written parental consent shall be obtained for a multidisciplinary evaluation to be conducted according to *Bulletin 1508, Pupil Appraisal Handbook* and an interim IEP may be developed.

a. During the time the evaluation is in process, all regulations shall apply.

b. If an interim IEP were developed, it—may be amended as necessary.

4. Parents of these students shall be informed at the interim IEP Team meeting that the evaluation results must classify a student as exceptional for that child to remain in the special education program.

5. An interim IEP shall not be developed when a student has a current IEP or evaluation.

B. Parental Consent. Parental consent for the interim placement and related services shall be obtained by parental signature on the IEP form.

1. Parents shall be informed that the student will exit from the special education program when the student is found to be ineligible for special educational services according to the criteria in *Bulletin 1508, Pupil Appraisal Handbook*. A statement stating the above should be written in the comment section of the IEP when it is developed.

2. When the student is eligible for special educational services, an initial IEP/placement meeting will be conducted within 30 calendar days from the date of dissemination of the written evaluation to the LEA's special education administrator.

C. Program Considerations. In the development of the IEP, the IEP Team's discussion about the current performance and goals for the student will have to be conducted without the benefit of integrated assessment data or teacher observation.

1. To gather information about current performance, the parent may be the prime source of information about the student's skills, development, motivation, learning style, etc.

2. The goals should address the student's educational program during the assessment process.

3. When available information indicates that related services are required, services should be provided.

4. The student's performance during an interim placement shall be documented by the teacher and pupil appraisal personnel. This documentation should provide meaningful data for determining an appropriate program and placement.

D. Extended School Year

1. Students on interim IEPs shall be considered for extended school year services. The IEP Team will consider the criterion/criteria to make the ESY determination and what data must be collected to make that decision. Student performance on academic/functional goals and/or objectives/benchmarks on the IEP are monitored on an ongoing basis throughout the school year. The data collected through progress monitoring (e.g., grades, progress reports, behavior checklists, task analyses, teacher observation logs, etc.) shall be reviewed to determine the progress the student makes toward acquisition of his or her goals, benchmarks, objectives, and whether the student's progress meets any of the criteria for ESY eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2341 (November 2009).

§309. Related Services Considerations

A. *Related Services for Students with Disabilities* means transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. A LEA, as part of its requirement to provide FAPE, shall provide any related service for which there is a documented need. However, for certain related services, specific eligibility criteria shall be met according to *Bulletin1508, Pupil Appraisal Handbook*. The decision regarding related services shall be made in view of each student's unique needs. Sources of documentation can be the individual evaluation report and any subsequent evaluation reports submitted by therapists, physicians, psychologists, parents, etc. Examples of support and related services may include speech/language pathology services, assistive technology, physical or occupational therapy, audiological services, orientation and mobility services, interpreting services and counseling, including rehabilitation counseling, psychological services, recreation, including therapeutic recreation, early identification and

assessment of disabilities in children and transportation services. Medical services for diagnostic or evaluation purposes may also include school health services and school nurse services, social work services in schools, and parent counseling and training.

1. Exception; services that apply to students with surgically implanted devices, including cochlear implants;

a. related services do not include a medical device that is surgically implanted, the optimization of the device's functioning (e.g., mapping), maintenance of the device, or the replacement of the device;

b. nothing limits the right of a student with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP Team to be necessary for the child to receive FAPE;

c. nothing limits the responsibility of the LEA to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including breathing, nutrition, or operation of other bodily functions, while the student is transported to and from school or is at school; or

d. nothing prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

2. The IEP Team shall consider each related service that is recommended on the evaluation reports and document and the decisions on the IEP form. For example, the team shall:

a. list all services recommended by the team and the service provision schedules, dates, and location, etc.;

b. explain the team's decisions not to include a recommended related service;

c. explain delays in providing any related service listed on the IEP.

i. This delay, or hardship, in no way relieves a LEA from providing the service and from documenting every effort to provide it in a timely manner.

d. The participation of related service personnel is extremely important during the IEP Team meeting. Involvement should be through either direct participation or written recommendations.

3. Additional Notes about Related Services

a. Adapted physical education (APE) is not a related service; APE is a direct instructional program. A student who requires only adapted physical education may be eligible for related services, since adapted physical education is a direct instructional program.

b. A student who is identified with only a speech or language impairment may be eligible for other related services, since in this case speech therapy is the direct special educational program.

c. Considerations for related services provided during ESY are the same as for the IEP.

B. Related Services for Students who are Gifted and/or Talented may include transportation or counseling, which must be addressed on the IEP. The decision regarding related services shall be made in view of each student's unique needs. Sources of documentation can be the individual evaluation report and any subsequent evaluation reports submitted by therapists, physicians, psychologists, parents, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2342 (November 2009).

Chapter 5. Participation in Statewide Assessments

§501. Participation in Statewide Assessments

A. All special education students shall participate in statewide assessments in grades 3-11.

B. Students are to take the test that corresponds to the grade in which they are enrolled.

C. The decision as to which test a student with disabilities participates in is made on an annual basis by the IEP team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2343 (November 2009).

§503. Types of Alternate Assessments

A. LEAP Alternate Assessment, Level 1 (LAA 1), was developed for students with disabilities who are served under IDEA for whom there is evidence that the student is functioning three (3) or more standard deviations below the mean in cognitive functioning and/or adaptive behavior. Only students with the most significant cognitive disabilities or functions like a student with significant cognitive disabilities are eligible to participate in LAA 1 (this does not include students identified as Mental Disabilities—mild). LAA 1 is a performance-based assessment designed for students whose instructional program is aligned with the Louisiana Extended Standards.

B. LEAP Alternate Assessment, Level 2 (LAA 2) based on modified academic achievement standards, was developed for students with persistent academic disabilities who are served under IDEA to participate in academic assessments that are sensitive to measuring progress in their learning. There is evidence the student is having significant academic difficulties in English language arts, reading and/or mathematics. LAA 2 is a criterion-referenced assessment designed for students whose instructional program is aligned with the Louisiana Content Standards.

1. A student who meets the LAA 2 Participation Criteria may test in all or in one or more content areas of LAA 2, based on the determination of the IEP team. The IEP team may decide that the student will participate in the LAA 2 assessment in one or more content areas and at the same time participate in the regular statewide assessment (iLEAP/LEAP/GEE) for the remaining content areas required at the student's enrolled grade.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2343 (November 2009).

§505. Alternate Assessment Participation Criteria

A. LEAP Alternate Assessment, Level 1 (LAA1)

1. The student has a disability that significantly impacts cognitive function and/or adaptive behavior.

2. The student requires extensive modified instruction aligned with the Louisiana Extended Standards to acquire, maintain, and generalize skills.

3. The decision to include the student in LAA 1 is not solely based on the following:

- a. student's placement;
- b. excessive or extended absences;
- c. disruptive behavior;
- d. English language proficiency;
- e. student's reading level;
- f. student's disability according to *Bulletin 1508*;
- g. social, cultural, and/or economic differences;
- h. anticipated impact on school performance scores;
- i. administrative decision;
- j. expectation that the student will not perform well on the LEAP, iLEAP, GEE or LAA 2.

B. LEAP Alternate Assessment, Level 2 (LAA 2)

1. The student scored at the Unsatisfactory level in English language arts and/or mathematics on the previous year's LEAP/iLEAP/GEE or participated in the LAA 1 or LAA 2.

2. The student has an IEP with goals based on academic content standards for the student's enrolled grade and the student requires support to access the general education curriculum.

3. The student's progress to date, in response to appropriate instruction designed to address the student's individual needs is such that, even if significant growth occurs, the student will not achieve grade-level proficiency within the year covered by the student's IEP.

4. The decision to test a student in LAA 2 is not solely based on the following:

- a. student's placement;
- b. excessive or extended absences;
- c. disruptive behavior;
- d. English language proficiency;
- e. student's reading level;
- f. student's disability according to *Bulletin 1508*;
- g. social, cultural, and/or economic differences;
- h. anticipated impact on school performance scores;
- i. administrative decision;
- j. the expectation that the student will not perform well on the regular assessment (LEAP, iLEAP, GEE).

C. LAA 1 and LAA 2 Participation Criteria forms can be located in *Bulletin 1530*, Section 2, or at www.louisianaschools.net/ide/saa/2219.html.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2343 (November 2009).

§507. Test Accommodations

A. The assessment in which the student is to participate and any accommodations the student is to receive for instruction and assessment shall be documented annually on the program/services page of the student's IEP.

B. Test accommodations cannot be different from or in addition to the accommodations indicated on the student's IEP and provided in regular classroom instruction and assessment.

C. Test accommodations are described in Bulletin 118, Statewide Assessment Standards and Practices.

D. For Students who are gifted and/or talented, any accommodations the student is to receive for instruction and assessment shall be documented annually on the student's IAP. A copy of the IAP should be kept in the student's IEP folder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2343 (November 2009).

Chapter 7. Extended School Year Services

§701. Overview

A. Extended school year (ESY) services are the provision of special education and related services to students with disabilities beyond the normal school year of the LEA. The LEA must utilize specific eligibility criteria to determine the need for extended school year services to ensure the provision of FAPE. Services are provided in accordance with an IEP and at no cost to the parents of the student.

B. Once a student's extended school year services have been planned through the IEP process, the services shall be implemented. LEAs should provide extended school year instruction in a location that is the least restrictive environment option for that student. The services necessary to meet the goals and objectives targeted on the ESY section of the IEP are to be provided.

C. Careful documentation should be kept in order to evaluate the student's performance and progress toward the completion of the ESY goals and objectives. Accurate records of student performance will assist the IEP Team in the upcoming school year to continue the educational program with a minimum of interruption and disruption.

D. Ongoing student performance assessment is always an integral part of any educational program, and it should be documented on appropriate data collection forms (e.g., grade book, checklist, task analysis form) and progress reports.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2344 (November 2009).

§703. Responsibilities

A. The IEP Team is responsible for developing the extended school year services for the student. The IEP Team shall consider the student's educational needs according to the criterion/criteria by which that student qualified for ESY services. Throughout the planning phase, the team is involved in a very individualized decision-making process based on the student's specific needs identified throughout the regular school year data collection.

B. At the IEP Team meeting, the IEP Team shall discuss any and all pertinent criterion/criteria and examine student performance data. The IEP Team shall consider student performance on critical skills as they relate to ESY eligibility criteria.

1. The decision regarding ESY eligibility should not be made before January 1 of the current school year unless there is sufficient data to make that decision prior to January.

2. Extended school year services shall be provided only when a student's performance data indicate that the services are necessary for the provision of FAPE.

3. The LEA may not limit extended school year services to particular categories of disability; or unilaterally limit the type, amount, or duration of those services.

C. ESY services are available for students who meet the eligibility criteria and meet the following conditions:

1. are between the ages 3-21;
2. are identified with a disability according to the *Bulletin 1508, Pupil Appraisal Handbook*; and
3. have a current IEP.

D. ESY services are:

1. based on student's unique educational needs;
2. designed to address critical skills of the student;
3. tailored to fit the needs of each qualifying student; therefore, the length of ESY services varies;
4. considered and determined on a yearly basis; and
5. provided sometimes in non-traditional settings.

E. All LEAs shall utilize the specific eligibility criteria to determine the need for ESY and service planning guidelines to design, implement and evaluate the extended school year service provided to the student by:

1. evidence related to the student performance of critical skills as it relates to ESY eligibility criteria; and,
2. the probability that the student could master/maintain the goals and/or objectives/benchmarks stated on the IEP with the provision of ESY services.

F. LEAs should continue to address LRE needs of the student in the implementation of ESY services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2344 (November 2009).

§705. ESY Eligibility Criteria

A. ESY eligibility criteria shall be used in the determination of eligibility for ESY services.

B. The determination of eligibility shall be made prior to the start of summer ESY services.

C. Three criteria are used to determine a student's need for ESY services: Regression-Recoupment, Critical Point of Instruction, and Special Circumstances.

1. Regression-Recoupment (R-R) Criterion

a. This criterion shall be applied to all students with significant cognitive disabilities or who functions like students with significant cognitive disabilities at all ages and grade levels, including preschool aged students.

b. This criterion should be considered for all students suspected of having difficulty with recoupment of skills.

i. When the IEP Team decides to monitor a student using Regression-Recoupment criterion who is not participating in LAA 1, the team shall target specific critical goals and/or objective/benchmarks on the IEP as a basis to determine eligibility at the next IEP.

c. Definitions

i. *Pattern of Regression-Recoupment Problems*—following a break in instruction, there is a failure to regain the performance level for an objective/skill such that the highest post-break score is lower than the highest pre-break score for any objective (i.e., critical skill) across two breaks in instruction.

ii. *Break in Instruction*—a break of at least five instructional days.

iii. *Highest Pre-Break Score*—the highest score (of at least two data points) in the two-week period immediately preceding the break in instruction.

iv. *Highest Post-Break Score*—the highest score (of at least two data points) in the two-week period immediately following the break in instruction.

d. Steps for applying the R-R Criterion

i. The teacher/instructional personnel reviews student performance data before and after a minimum of two breaks in instruction. The method and frequency of data collection will depend on the objectives/benchmarks.

ii. Following extended breaks in instruction (i.e., full summer), it is expected the student will recoup the skills within 4 weeks.

iii. The teacher/instructional personnel determines whether there is a regression-recoupment problem such that the highest of the post-break score is lower than the highest of the pre-break score for “any” objective/benchmark and/or break.

iv. The student is eligible for ESY services when the performance data demonstrates a pattern of problems with recouping performance on any objective/skill across any two breaks within the current IEP.

2. Critical Point of Instruction (CPI) Criterion

a. This criterion shall be considered for all students.

b. Definitions

i. *Critical Point of Instruction-1 (CPI-1)*—in the absence of extended school year services, the student would be at risk of losing general education class time or increasing special education service time because of a lack of academic or social skill development.

ii. *Critical Point of Instruction-2 (CPI-2)*—in the absence of extended school year services, the student would be at risk of losing significant progress made toward acquisition, fluency, maintenance, and/or generalization of skills relevant in the pursuit of critical life areas (i.e., self-help, community access, or social/behavioral skill areas). Behaviors to be considered for CPI-2 include self-injurious, ritualistic, and/or aggressive behaviors that negatively impact the health, well being and/or delivery of instruction to the student.

c. Steps for applying the CPI criteria

i. The teacher/instructional personnel examines student performance data and determines whether in the absence of extended school year services, the student would be at risk of losing general education class time or increasing special education service time because of a lack of academic or social skill development (CPI-1) or would be in danger of losing significant progress made toward acquisition, fluency, maintenance, and/or generalization of skills relevant in the pursuit of critical life areas (i.e., self-help, community access, or social/behavioral skill areas) (CPI-2).

ii. CPI-1: The teacher/instructional personnel determines that the student is projected to be at a critical stage in the general education curriculum, and special education services provided during an extension of the regular school year will allow the student to maintain the level of services indicated in the regular year IEP.

iii. CPI-2: The teacher/instructional personnel determine that the student will require extended school year services to achieve meaningful benefit in the goal area.

(a). Students exhibiting interfering behaviors and qualifying under CPI-2 should have a goal and/or objectives/benchmarks on the IEP to address those behaviors; and documentation shall include a description of the behavior, baseline data, copy of the behavior intervention plan, and when available, a copy of the functional behavior analysis.

iv. The student is eligible for ESY when there is evidence the impact of providing ESY services could enable the student to maintain and/or achieve grade-level expectations and reduce the loss of skill acquisition, fluency and/or maintenance.

3. Special Circumstances (SC) Criterion

a. Employment

i. Students ages 16-21 shall be considered for ESY services when there is documentation (i.e., job performance data) that the student is in need of support to maintain paid employment. *Paid Employment* refers to pay commensurate/minimum wage or has an alternate wage certificate from the Department of Labor to be paid at a reduced level.

ii. A written statement from the student's employer signifying his or her intention to employ the student throughout the summer months; and

iii. a current IEP with goals and action steps targeted for transition in the area of employment.

iv. The student is eligible for ESY services when there is evidence the student is in need of support to maintain paid employment during the summer months.

b. Transition from Early Steps to Part B (Preschool)

i. Students transitioning from Early Steps to Part B preschool services who have spring/summer birthday shall be considered for ESY services.

ii. The student is eligible for ESY when there is evidence from the performance data on the Individualized Family Service Plan (IFSP) that the student will fail to maintain performance skills and will regress without ESY services.

c. Transition to Post-school Outcomes

i. Students who have a transition plan and who are expected to exit the LEA at the end of the school year shall be considered for ESY services. The teacher/instructional personnel shall examine the documentation of the incomplete action steps and corresponding goals that are the responsibility of the LEA.

ii. The student is eligible for ESY when the student is in need of services to complete the action steps that are the responsibility of the LEA that are not expected to be completed by the end of the student's final year in school.

d. Excessive Absences

i. A student with a disability who has documented absences during the school year, in excess of 25 days, for health-related conditions without the provision of hospital/homebound services and who has failed to make projected progress shall be considered for ESY services.

ii. A student is eligible for ESY services when there is evidence that failure to acquire the goals and/or objectives/benchmarks will seriously jeopardize the overall educational progress of the student; and

iii. the ESY services could have a significant impact on the student's ability to make progress toward the acquisition of established goals and objectives/benchmarks.

e. Extenuating Circumstances

i. There may be unusual situations or circumstances when ESY services may be needed, but the student does not meet any of the eligibility criteria.

ii. The teacher/instructional personnel shall use professional judgment to make the decision whether the student needs ESY services in order to receive FAPE. The teacher/instructional personnel shall determine if a break in instruction will negatively impact or cause the student to lose skills that will restrict the student's ability to function as independently as possible.

iii. Two steps to determine eligibility for an extenuating circumstance are:

(a). consider the previously described ESY eligibility criteria, and

(b). determine there is a need for ESY services through the examination of student performance data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2344 (November 2009).

§707. ESY Eligibility Determination

A. The ESY eligibility decision for each student is to be made between January 1 and the onset of ESY services for the current school year unless there is sufficient data to make that decision prior to January.

B. After examining the student's performance data one of the following decisions shall be made:

1. the student is eligible for services;
2. the student is eligible for services, and the parent declines;
3. the student is ineligible for services; or
4. ESY determination of eligibility will be made later during the same school year.

C. When the student is determined eligible for ESY services, the team must complete the ESY form of the IEP.

D. When the IEP Team decides not to make a determination it shall be documented on the IEP and the ESY decision must be prior to the start of ESY services.

E. When the student is determined ineligible for ESY services based on student performance data, the parents must receive notification of the determination and informed of their due process rights and procedures.

F. When consensus regarding ESY eligibility or services cannot be reached and the parents disagree with the decision, the parents shall be informed of their due process rights and procedures.

G. If the parents of a student with disabilities decline extended school year services, this does not affect other IEP services. ESY does not apply to students who are gifted and/or talented or students on Services Plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2346 (November 2009).

§709. Provision of ESY Services

A. It is the responsibility of the special education administration to schedule the specific days of the week and the beginning and ending date options to accommodate each student's ESY services. As indicated throughout this process, duration is based on the individual needs of the student.

1. Regression-Recoupment Criterion (R-R). The emphasis will be on the maintenance of essential skills. The breaks between ESY and the regular school year should not exceed the break periods upon which the student qualified for ESY services.

2. Critical Point of Instruction 1 (CPI-1). The emphasis will be on the skills the student needs in order to prevent loss of general education time or to prevent an increase in special education service time. The length of time will be based on the number of skills the student must acquire to maintain his LRE.

3. Critical Point of Instruction 2 (CPI-2). The emphasis is on acquisition or maintenance of critical skills. The number of sessions per week will be dependent upon whether the specific student needs acquisition or maintenance. Acquisition programs are usually shorter with more sessions per week, while maintenance programs are often longer in duration with fewer sessions per week.

4. Special Circumstances (SC). The emphasis of the ESY services is on mastery of specifically targeted goals and objectives to assist in ensuring the student will be on track to achieve his or her measurable annual goals. The sessions/week and duration of the extended school year services will depend upon which and how many goals and objectives have been targeted and the lack of expected progress toward the achievement of the annual goals during the last school year.

B. The focus of a student's ESY services would be based on the needs identified.

1. The IEP Team determines the services the student will need to receive during the extended school year and which personnel will be needed to provide the services.

2. Not all students need the same program length. Extended school year services are an individual, student-based decision.

3. There is no minimum or maximum number of goals and objectives to be identified for ESY instruction. The number of objectives identified for ESY instruction is based on individual student needs. The major purpose of ESY services is to extend instruction from the regular school year to maintain FAPE. The ESY is not a program aimed at remediating all areas of deficit.

a. If the IEP Team determines that a new goal and/or objectives are needed for ESY, then the IEP shall be amended and a new goal and/or objective written.

C. Location

1. The IEP Team discusses the location where the ESY service should take place to implement each ESY goal and/or the objectives/benchmarks. One or more locations may be recommended. The LEA shall determine the most reasonable location(s) for the provision of ESY services.

a. When the location selected is home, indicate the number of minutes under Community on the time-frame grid.

D. Date ESY to Begin

1. The amount or duration of ESY services cannot be unilaterally limited for all students. When planning ESY services, it would be appropriate to consider the LEA's summer calendar. When the LEA's summer calendar is not available at the time of the IEP Team meeting where ESY services are being discussed, the team may estimate the date

to begin based on the duration of services determined to be needed by the student.

a. The IEP Team should discuss conflicts that could interfere with the student's attendance during the ESY. For example, there may be a family vacation or surgery scheduled. This information should be taken into account in scheduling the student's ESY services.

b. When a student meets eligibility criteria for ESY services under R-R, the breaks between regular school year and ESY services should not exceed the break periods used to determination eligibility.

E. Duration

1. The length of time ESY services is provided.

2. The criteria/criterion by which the student was determined eligible and the goals and/or objectives/benchmarks chosen to be addressed during the ESY services should dictate the duration of services.

F. Progress Reports

1. LEAs shall ensure that instructional personnel measure and report student outcomes. The student's progress toward achieving the measurable goal(s) during ESY services shall be recorded on the ESY form. A copy of the form with student progress indicated shall be sent to the parents within ten business days after the completion of ESY services.

2. A copy of the ESY form with the completed progress report information shall be placed in the student's IEP folder.

G. Transportation

1. Transportation shall be offered when necessary. As with other services, the IEP Team should recommend transportation services in the least restrictive, most appropriate mode available. The transportation recommended shall be reasonable and at no cost to the parents. Mileage reimbursement may be used as a transportation option only when the parents are willing to transport their child.

2. There may be cases in which students shall remain at a site longer than the time indicated on the ESY form of the IEP because of transportation limitations. When this is the case, the student shall be supervised at all times. The student's need to remain at the site because of transportation limitations shall be indicated in the comment box on the ESY form.

H. Evaluation

1. LEAs shall evaluate ESY services outcome data to determine overall effectiveness.

a. Effectiveness should be reflected in the match between the needs of the student and the services provided.

b. Effectiveness should be reflected in the criteria by which the students were determined to be eligible and whether the students mastered or maintained the goals/objectives/benchmarks chosen during the delivery of ESY services.

c. Effectiveness is evaluated from the individual student perspective, as well as system-wide.

d. Program operations should be examined to determine the effectiveness of the ESY services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2346 (November 2009).

Chapter 9. Services Plans for Parentally Placed Students in a Private School

§901. No Individual Right to Special Education and Related Services

A. No parentally placed private school student with disabilities has an individual right to receive some or all of the special education and related services that the student would receive when enrolled in a public school.

B. When a student with disabilities is enrolled in a religious or other private school by the student's parents and will receive special education or related services from an LEA, the LEA shall:

1. initiate and conduct meetings to develop, review, and revise a *Services Plan* for the student;

2. ensure the attendance of a representative of a private school when the student is voluntarily enrolled in a private school. When the representative cannot attend, the LEA shall use other methods to ensure participation by the private school or facility, including individualized or conference telephone calls.

3. Parentally placed private school students with disabilities may receive a different amount of services than students with disabilities in public schools.

4. Students with disabilities aged three-through-five are considered to be parentally placed private school students with disabilities when enrolled by their parents in private, including religious elementary schools, that meets the definition of elementary school in *Bulletin 1706/Subpart A-Regulations for the Implementation of the Children with Exceptionalities Act §905*.

C. When the LEA opts to provide special education services to students identified as gifted and/or talented, the Services Plan may be used to identify the services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2347 (November 2009).

§903. Services Provided in Accordance with a Services Plan

A. Students with disabilities who have been designated to receive services shall have a Services Plan that describes the specific special education and/or related services that the LEA will provide to the student as determined through the consultative process.

1. The services plan to the extent appropriate will be developed, reviewed, and revised in accordance with the rules and regulations pertaining to the IEP as stated in this document.

2. For any additional questions regarding services for students with disabilities enrolled by parents in private school go to idea.ed.gov, and click on the Q and A documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:2347 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#026

RULE

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators Credit Recovery (LAC 28:LXXIX.2120)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §2120, "Credit Recovery." This policy revision allows nonpublic high schools to offer credit recovery classes. These classes allow students to recover credit for courses they failed at a reduced amount of time. The policy includes the requirements for these classes. This policy revision is intended to help prevent dropouts and assist in helping students graduate on time.

**Title 28
EDUCATION**

**Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators
Chapter 21. Curriculum and Instruction
Subchapter C. Secondary Schools
§2120. Credit Recovery**

A. Credit recovery refers to instructional programs for students who have failed courses taken previously.

B. Schools may develop credit recovery programs which are self-paced and competency-based.

1. Students earning Carnegie credit in a credit recovery course must have previously taken and failed the course.

2. Students shall not be required to meet attendance requirements in §901.C for credit recovery courses, provided students have met attendance requirements when they took the course previously or the students' combined attendance during the previous course and the credit recovery course meet the attendance requirements. Schools shall not be required to meet the instructional time requirements in §703 for credit recovery courses.

3. Credit recovery courses taught in a classroom setting using computer software programs designed for credit recovery must be facilitated by a qualified teacher.

a. Additional instruction to cover content not included in the software programs shall be provided by a teacher properly qualified in the content area.

4. For a student to earn Carnegie credit in a credit recovery course, the student must take the final exam established by the school for that course and meet the minimum requirements for passing the course according to the school's grading policy.

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 35:2348 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#013

RULE

Board of Elementary and Secondary Education

Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators—Immunizations (LAC 28:LXXIX.1101)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators*: §1101, Immunization. The Rule is based upon the enactment of R.S. 17:170.4 which requires immunization against meningococcal disease for certain students.

**Title 28
EDUCATION**

**Part LXXIX. Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators
Chapter 11. Health
§ 1101. Immunizations**

A. - C. ...

D. Beginning with 2009-2010 school year, students entering sixth grade and students eleven years old entering any grade and students eleven years old participating in approved home study shall provide evidence of current immunization against meningococcal disease as a condition of entry into such grade at any city, parish or other local public school or nonpublic school. Chief Administrators are responsible for checking students' records and ensuring enforcement of provisions. Exemptions include: parent/guardian waivers for religious or personal reasons, written statement from physician stating contraindicated medical reasons, shortage of supply of vaccine.

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; R.S. 17:170.4.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2348 (November 2003), amended LR 31:3078 (December 2005), LR 35:2348 (November 2009).

Jeanette B. Vosburg
Executive Director

0911#012

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Louisiana GO Grant
(LAC 28:IV.1201, 1203, 1205, 1207, 1211, 1213 and 1217)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6). (SG09108R)

**Title 28
EDUCATION**

**Part IV. Student Financial Assistance—Higher
Education**

Scholarship and Grant Programs

Chapter 12. Louisiana GO Grant

§1201. General Provisions

A. - C.3. ...

D. The total amount awarded for GO Grants during any academic year is limited to the total amount appropriated for the award for the academic year. Eligibility for an award during any particular semester or term does not guarantee that a student will receive the GO Grant.

E. Allocation of Funds to Postsecondary Institutions

1. For the 2009-2010 academic year, funds are allocated based on the institution's on-time billings for the 2008-2009 academic year divided by the total amount of on-time billings for 2008-2009 multiplied times the total amount appropriated for the 2009-2010 academic year.

2. Beginning with the 2010-2011 academic year and thereafter, the amount allocated will be determined by dividing the amount of the institution's prior year's allocation that was expended by the total amount appropriated for that academic year multiplied by the total amount appropriated for the current year.

F. Reallocation of Funds. Uncommitted funds allocated to a particular institution shall be reallocated if not committed by the deadline set by LOSFA. Uncommitted funds shall be apportioned among those institutions that have committed all funds allocated to the institution before the deadline and have students who are eligible for an award and did not receive it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2614 (December 2007), amended LR 34:236 (February 2008), LR 35:2349 (November 2009).

§1203. Definitions

A. The following definitions shall be applicable to the Louisiana GO Grant Program. Words and terms not otherwise defined in this Chapter shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

* * *

Education Cost Gap (ECG) Threshold—an amount set by the Board of Regents that is projected to provide the award to all students who are otherwise eligible and have an ECG at or greater than that amount.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2615 (December 2007), amended LR 34:236 (February 2008), LR 35:2349 (November 2009).

§1205. Application and Initial Eligibility

A. - B.2. ...

3. have an Education Cost Gap (ECG) at least equal to or greater than the ECG threshold in effect for the academic year; and

4.a. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009).

§1207. Continuing Eligibility

A. - B.1. ...

2. The student must still have an ECG at least equal to or greater than the ECG threshold in effect for the academic year as determined using the ECG formula.

3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2616 (December 2007), amended LR 34:238 (February 2008), LR 35:2349 (November 2009).

**§1211. Responsibilities of Eligible Louisiana
Institutions**

A. - C.1. ...

2. payment request amount:

a. \$1,000 per semester for a student enrolled full time after the 14th class day in an eligible Louisiana institution that operates on a semester basis or \$667 (\$666 for the final term of the award year) per term for a student enrolled full time after the 9th class day in an eligible Louisiana institution that operates on a term basis or the amount authorized for payment as announced in a LOSFA Bulletin prior to the billing date, whichever is less;

b. \$500 per semester for a student enrolled half time after the 14th class day in an eligible Louisiana institution that operates on a semester basis or \$333 (\$334 for the final term) per term for a student enrolled half time after the 9th class day in an eligible Louisiana institution that operates on a term basis or the amount authorized for payment as announced in a LOSFA Bulletin prior to the billing date, whichever is less;

c. \$250 per semester for a student enrolled less than half time after the 14th class day in an eligible Louisiana institution that operates on a semester basis or \$167 (or \$166 for the final term) per term for a student enrolled less than half time after the 9th class day in an eligible Louisiana institution that operates on a term basis or the amount authorized for payment as announced in a LOSFA Bulletin prior to the billing date, whichever is less;

d. for summer sessions, the difference between what the student was paid during the preceding fall semester or term, winter term, if applicable, and spring semester or term and the student's maximum annual award amount; provided the award for the summer session shall not exceed \$1,000 or the amount authorized for payment as announced in a LOSFA Bulletin prior to the billing date, whichever is less;

C.3. - F. ...

G. Each postsecondary institution shall have and follow a written policy describing that institution's procedures for selecting students for payment of a GO Grant. The policy must be available for audits conducted under §1209.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2617 (December 2007), amended LR 34:239 (February 2008), LR 35:2349 (November 2009).

§1213. Responsibilities of LOSFA

- A. - D.2. ...
- 3. repealed.
- E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2617 (December 2007), amended LR 34:239 (February 2008), LR 35:2350 (November 2009).

§1217. Responsibilities of the Board of Regents

A. At least on an annual basis, the Board of Regents shall review and adjust, as necessary, the ECG threshold, to provide grants to eligible students with the funds appropriated for the GO Grant Program and shall provide notice to LOSFA of any change.

B. In the event of receipt of notice of a shortfall and additional funds are not allocated for payment of all anticipated awards for subsequent semesters, terms and sessions during the academic year, the Board of Regents shall develop, approve and deliver a plan to LOSFA to address the shortfall.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3023 and R.S. 17:3129.7.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 35:2350 (November 2009).

George Badge Eldredge
General Counsel

0911#008

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

**Integration of MACT Standards
(LAC 33:V.3105)(HW105ft)**

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.3105 (Log #HW105ft).

This rule is identical to federal regulations found in 40 CFR 264.340(b)(1), 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 clarifies compliance monitoring provisions and corrects a typographical error in the regulations. This action is needed as part of the RCRA XVIII authorization package

in order for the state hazardous waste regulations to maintain equivalency with the federal regulation. The basis and rationale for this rule are 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 31. Incinerators

§3105. Applicability

- A. ...
- B. Integration of the MACT Standards

1. Except as provided by Paragraphs B.2-4 of this Section, the standards of this Subsection do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005, or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR Part 63, Subpart EEE, as incorporated by reference at LAC 33:III.5122, by conducting a comprehensive performance test and submitting to the administrative authority a notification of compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR Part 63, Subpart EEE. Nevertheless, even after this demonstration of compliance with the MACT standards, RCRA permit conditions that were based on the standards of LAC 33:V.Chapters 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 35, and 37 will continue to be in effect until they are removed from the permit or the permit is terminated or revoked, unless the permit expressly provides otherwise.

- B.2. – E. Table 1. Footnote 1. ...

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 11:1139 (December 1985), LR 13:433 (August 1987), LR 14:424 (July 1988), LR 15:737 (September 1989), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:318 (February 1998), LR 24:681 (April 1998), LR 24:1741 (September 1998), LR 25:479 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:301 (March 2001), LR 28:1004 (May 2002), LR 29:323 (March 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 32:830 (May 2006), LR 34:629 (April 2008), LR 34:1898 (September 2008), LR 34:2396 (November 2008), LR 35:1880 (September 2009), LR 35:2350 (November 2009).

Herman Robinson, CPM
Executive Counsel

0911#051

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Statutory Exemption for Air Permits (LAC 33:III.501)(AQ270)

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 Air regulations, LAC 33:III.501 (Log #AQ270).

Act 547 of the 2008 Regular Session of the Louisiana Legislature provides for exemptions from permitting requirements for certain air emissions sources by enacting R.S. 30:2054(B)(2)(b)(ix). The exemption applies to any source for which facility-wide potential emissions are less than 5 tons per year for each of any regulated air pollutant as defined by the Clean Air Act, 42 U.S.C. 7401 et seq., less than 15 tons per year emitted of all such defined pollutants combined, and less than the minimum emission rate for each toxic air pollutant established pursuant to R.S. 30:2060, unless such source is required to obtain a permit pursuant to the Clean Air Act, 42 U.S.C. 7661 et seq. The Statute also states, "for purposes of this Item, "potential emissions" shall mean the emissions the facility is capable of emitting considering all control measures in place, utilized and properly maintained and historical practices, including hours of operation and number of employees at the facility." This Rule will add the statutory exemption to the air quality regulations (LAC 33:III). The basis and rationale for this rule are to add the statutory exemption from the requirement to obtain an air permit to the air quality 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 III. Air

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - B.1.d. ...

2. Statutory Exemptions. The requirement to obtain a permit in accordance with this Chapter does not apply to:

a. ...

b. controlled burning of agricultural by-products in the field or of cotton gin agricultural wastes;

c. controlled burning in connection with timber stand management, or of pastureland or marshland in connection with trapping or livestock production; or

d. any source that is not a *Part 70 source*, as defined in LAC 33:III.502, and for which:

i. facility-wide potential emissions are less than:

(a). 5 tons per year for each of any regulated air pollutant as defined by the Clean Air Act;

(b). 15 tons per year of all such defined pollutants combined; and

(c). the minimum emission rate (MER) for each toxic air pollutant established by Tables 51.1 and 51.3 of LAC 33:III.Chapter 51;

ii. for purposes of this exemption, any physical limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment, shall be treated as part of its design; and

iii. for purposes of determining applicability of 40 CFR Part 70 and LAC 33:III.507, *potential to emit* as defined in LAC 33:III.502 shall be used.

B.3. - C.13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009).

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0911#052

RULE

Office of the Governor State Military Department

Military Forces of the State

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and Louisiana Revised Statutes 29:11, the State Military Department has adopted Louisiana National Guard Regulation 27-10, Military Justice. This regulation was developed in accordance with R.S. 29:101, et seq. in order to provide the Military Forces of the State of Louisiana the proper procedures to implement Military Justice. This regulation is applicable to the servicemembers of the Louisiana National Guard, the Louisiana State Guard and any and all other state military forces. This is the first time these rules will be published and implements changes to the Louisiana Code of Military Justice, Act No. 309 of the 2007 Regular Session of the Legislature and revisions to Army Regulation 27-10, effective 16 December 2005. The rules in this Part of the Louisiana Administrative Code will be contained in nine Chapters and seven Appendixes: Chapter 1 General, Chapter 2 Basics Of Military Justice, Chapter 3 Investigating And Obtaining Evidence, Chapter 4 Non-Judicial Punishment, Chapter 5 Pretrial Procedures, Chapter 6 Trial Procedures, Chapter 7 Post-Trial Procedures, Chapter 8 Reserved For Future Publication, Chapter 9 Complaints Under Article 138, LCMJ, Appendixes: A - Military Justice Abbreviations, B - Military Justice Definitions, C - Nonjudicial Punishment Guide, D - Summary Courts-Martial Guide, E - Jurisdictional Alignment For Louisiana Army National

Guard, F - Punitive Articles Of The Louisiana Code Of Military Justice, G - Request For Arrest Warrant Packet.

Title 41

MILITARY FORCES OF THE STATE

Part II. Military Justice

Chapter 1. General

§101. Authority

A. U.S. Constitution, Article I, Section 8, clauses 15 and 16; Article II, Section 2, clause 1; Article VI; Amendment X.

B. Title 10, Chapter 47, U.S. Code (UCMJ); Title 32 U.S. Code, Sections 326-333.

C. Manual for Courts-Martial, United States, 2008 (MCM).

D. Army Regulation 27-10, Military Justice.

E. Air Force Manual 111-6, Military Justice.

F. Louisiana Constitution, 1974, Article IV, Section 5(J).

G. Louisiana Revised Statutes 29:2, 39, 136, 242.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2352 (November 2009).

§102. Purpose

A. This Regulation prescribes policies and procedures pertaining to the administration of military justice within the Louisiana National Guard and implements the Louisiana Code of Military Justice (LCMJ). Its format is designed to be of practical assistance to the commander in his effort to be effective and fair in matters relating to military law. Although even the most routine legal situation may seem confusing initially, the solution will generally prove to be relatively simple. This Regulation presents practical advice about many aspects of military justice and is designed to equip all concerned with the resources necessary to make swift, fair, and effective decisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2352 (November 2009).

§103. Applicability

A. General. This Regulation applies to all persons in the military forces and applies at all places. [LCMJ Article 5.]

B. Extraterritorial Application. Courts Martial and Courts of Inquiry may be convened and held in units of the Louisiana National Guard while those units are serving outside the State, with the same jurisdiction and power as to persons subject to the LCMJ as if the proceedings were held inside the State, and offenses committed outside the State may be tried and punished either inside or outside the State. However, there is no extraterritorial application of the LCMJ to a Louisiana National Guard unit serving overseas in a Title 10, U.S. Code status. Soldiers committing offenses in a Title 10 status must be adjudicated by active duty units through the application of the Uniform Code of Military Justice (UCMJ).

C. Duty Status Limitation. No person may be tried or punished for any offense under LCMJ Articles 77-134 unless the act(s) or omission(s) constituting the offense was committed while he was in a duty status or during a period of time in which he was under lawful order to be in a duty status. (For purposes of Article 112a only, membership is equated with duty status.) Nevertheless, the processing of

charges and all proceedings, including trial, may be conducted without regard to duty status of the accused, and is not affected by the place where the military justice action takes place. [LCMJ Article 2.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2352 (November 2009).

§104. Suggested Improvements

A. The proponent agency of this Regulation is the Office of the State Judge Advocate. Any questions and/or recommendations for improvements concerning these materials should be directed to Joint Forces Headquarters Louisiana, Consolidated Law Center, 5445 Point Clair Road, Box 28, Carville, LA 70721.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2352 (November 2009).

§105. Explanation of Abbreviations and Terms

A. General. Abbreviations and special terms used in this Regulation are explained in the Glossary. [See also, LCMJ Article 1, 10 U.S. Code Section 101, 32 U.S. Code Section 101, and Rules for Courts-Martial (R.C.M.) 103 for definitions of terms used therein.] If a term is not adequately explained in this Regulation, it should receive the construction and usage customarily accorded by reference to dictionaries of the English language.

B. Special Rules. Unless otherwise specifically so stated, use of the male pronoun shall be construed to include the female, and use of the term "Servicemember" includes Soldiers and Airmen of the Louisiana National Guard. References to terms peculiar to one branch of military service shall, unless the context specifically indicates a contrary intent, be construed to include the corresponding term(s) for other branch(es) of the military service. Words used in the singular number apply also to the plural; words used in the plural number include the singular. The word "shall" is mandatory, and the word "may" is permissive. The term "Louisiana National Guard" shall include the terms Louisiana Army National Guard, Louisiana Air National Guard Military Department, State Militia, State Military Forces, State Guard, and State Defense Force unless context clearly indicates otherwise. The term "Parish" shall, where applicable, be construed to include the term, "County."

C. Cross-references. References to source materials located elsewhere are designated in [brackets.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2352 (November 2009).

§106. Responsibilities

A. State Judge Advocate. The State Judge Advocate (SJA) is responsible for the overall supervision and administration of military justice within the Louisiana National Guard. The State Judge Advocate is also the legal advisor to The Adjutant General (TAG) and the Governor in their capacities as General Courts Martial convening authorities. The SJA supervises all Judge Advocate Legal Services (JALS) in the National Guard. [LCMJ Article 6, 34, 60; R.C.M. 406, 1106.] The SJA or his assistants shall make

frequent inspections in the field in supervision of the administration of military justice. [LCMJ Article 6C.] The SJA may publish directives or rules not inconsistent herewith for the conduct of military justice operations.

B. Staff Judge Advocates. Brigade and/or Direct Reporting Unit Staff Judge Advocates are responsible for providing legal advice and services to their respective commands. The Staff Judge Advocate has responsibilities generally corresponding to those discharged by the State Judge Advocate with relation to TAG. Staff Judge Advocates assist the commander by identifying legal problems and participating in making legally acceptable decisions. Staff Judge Advocates supervise Trial Counsel and other Judge Advocates assigned to the DRU and control the duties and responsibilities assigned to the Trial Counsel and other Judge Advocates assigned to the DRU. Additionally, the Staff Judge Advocate supervises all paralegals assigned to the DRU and to Summary Court Martial Convening Authorities (i.e. Battalions) which are attached to the DRU. As such the Staff Judge Advocate is authorized by this regulation to consolidate all paralegals at a DRU law center in order to better provide efficient and timely legal services to the command.

C. Chief of Military Justice. The Chief of Military Justice is responsible for assisting in the professional development and guidance for all LANG Trial Counsel in all facets of military justice actions. The chief will supervise and is responsible for all post-trial matters for Special and General Courts-Martial. He will also provide guidance and assistance on pre-trial matters, especially preparation of convening orders and the selection of panel members.

D. Chief, Trial Defense Service. In order to provide independent trial defense counsel services to the Soldiers and Airmen of the Louisiana National Guard, TAG established Louisiana National Guard Trial Defense Service. (LANG TDS). Chief, LANG TDS shall operate independently from the State Judge Advocate and shall provide separate offices, automation, and support. Chief, LANG TDS shall provide defense counsel services for LANG personnel, whenever required by law or regulation and authorized by the State Judge Advocate. Chief, LANG TDS shall also develop programs and policies to promote the effective and efficient use of defense counsel resources and enhance the professional qualifications of all personnel providing defense services. Chief, LANG TDS is appointed by the State Judge Advocate and certified under LCMJ Article 27b(2) and is the Supervisor of all defense counsel assigned to LANG TDS. Chief, LANG TDS details defense counsel to courts martial and recommends personnel for service in LANG TDS. Chief, LANG TDS may represent soldiers and airmen in courts martial, administrative boards, and other proceedings and act as consulting counsel as required by law and regulations. Chief, LANG TDS may assist the State Judge Advocate and DRU SJA's with mobilization issues that do not relate to criminal law (ie Wills, Powers of Attorney).

E. Other Assigned Judge Advocate Legal Service (JALS) Personnel. Other assigned personnel of a JALS perform those duties prescribed by their superiors and/or outlined in applicable regulations as supplemented by superior competent authority.

F. Commanders. Commanders at each level are responsible for carrying out the military justice responsibilities outlined in this Regulation and other references. A copy of this Regulation is issued to each unit down to the company/squadron level to be maintained in the units' publications library, and is subject to inspection. It is imperative that commanders familiarize themselves with the contents of these materials. [See also, paragraph 2-3.]

G. Convening Authorities. Convening Authorities are responsible for carrying out those duties outlined in this Regulation and other references. Careful attention will be given to the area of Unlawful Command Influence discussed in Chapter 2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2352 (November 2009).

§107. Availability of Military Justice Publications

A. The complete text of the current Manual for Courts-Martial, United States, the Louisiana Code of Military Justice (R.S. 29:101, et seq.), and this Regulation, shall be available electronically to any member of the Louisiana National Guard by accessing the State Judge Advocate's site Louisiana Knowledge Online (LKO) at <http://nglashcbvitsp1/SiteDirectory/sja/default.aspx> printed copies are available upon request through Judge Advocates and the Trial Defense Service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2353 (November 2009).

§108. Prospective Application of Amendments

A. All references made to any provisions of the LCMJ, MCM, federal or state statutes, rules, or regulations shall automatically include amendments and additions thereto now or hereafter made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2353 (November 2009).

§109. Construction and Precedence

A. Principles of Construction. This Regulation and other military justice source materials shall be construed to secure simplicity in procedure, elimination of unjustifiable expense and delay, and fairness and efficiency in administration to the end that truth may be ascertained and proceedings justly determined.

B. Order of Precedence. Unless express authority or the context clearly indicate otherwise, the following authorities are applicable to the administration of military justice under the LCMJ in the following order of precedence:

1. the LCMJ and other provisions contained in La. Revised Statutes Title 29 [See, e.g. La. R.S. 29:11(F).];
2. the Military Rules of Evidence (M.R.E.) and Rules for Courts-Martial (R.C.M.);
3. Louisiana laws concerning criminal trials and procedures (e.g. La. C.Cr.P., La. C.E., etc);
4. the UCMJ.

C. Special Rules/Secondary Authorities.

1. Louisiana court decisions may be used in interpreting or construing Louisiana authorities (the LCMJ,

La. R.S., this Regulation, and other Louisiana laws and rules concerning criminal trials and procedures). Decisions of the U.S. Supreme Court, other federal courts, and the U.S. Court of Military Appeals (U.S.C.M.A.) may be cited in interpreting or construing federal authorities (e.g. M.R.E., R.C.M., UCMJ, and MCM). Decisions of the Courts of Military Review do not constitute precedent authority, but they may be cited as guidance or persuasive authority.

2. Other active component publications (regulations, pamphlets, etc.) not applicable to the National Guard when not in federal service may be used for guidance in administering military justice, but shall not be regarded as directive, particularly if they are incompatible with the general nature and organization of, or special procedures established or authorized by law for Louisiana National Guard military justice activities.

D. Matters Not Covered. All matters relating to the administration of military justice in the organized militia not otherwise provided for herein shall be decided by the customs and usage of the appropriate force or of the Armed Forces of the United States.

E. Consensual Departure Authorized. Nothing contained in this Regulation or other military justice authority shall prevent departure from any of the procedural requirements prescribed for military justice actions provided that the defendant makes a voluntary, knowledgeable, and intentional declaration on the record of his intention and desire to so depart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2353 (November 2009).

§110. Forms

A. Prescribed Forms. Certain forms in use by Louisiana and/or United States military forces are referred to herein. The use of any particular form described in connection with military justice actions is preferred but not mandatory. Variance from the specified forms does not constitute a jurisdictional defect or invalidate any proceeding.

B. Non-prescribed Forms. If a Department of Defense, Army, or Air Force form is available for certain purposes, it may be modified to comply with this Regulation and/or the LCMJ, and may be used for state purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2354 (November 2009).

§111. Jurisdictional Alignment of Louisiana Guard Units

A. The Adjutant General and Governor are the General Court-martial convening authorities. As such TAG or the Governor may publish a Jurisdictional alignment of units designating the Special Court Martial Convening Authorities and Summary Court-Martial Convening Authorities and the units under the jurisdiction of such authorities. TAG or the Governor may delegate to SPCMCA's the authority to jurisdictionally align their own subordinate units. This delegation must be in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2354 (November 2009).

Chapter 2. Basics of Military Justice

§201. The Commander's Role

A. The commander has the primary role in the administration of military justice. He is responsible for both enforcing the law and protecting the rights of the individual servicemember. Generally, the commander is one of the first to learn of conduct of one under his command that might require non-punitive disciplinary measures, non-judicial punishment or court-martial action. The commander's duties are two-fold. First, he has a duty to investigate the circumstances of a possible infraction and secondly, to determine the appropriate action. Factors such as the seriousness of the offense, the intent or lack thereof, the age, experience and any special qualifications of the offender, the past performance and record of the servicemember, and the state of morale and discipline in his unit will influence whether the commander prefers charges by a court-martial or disposes of the matter with non-punitive disciplinary action or non-judicial punishment. The commander has strong powers to exact obedience. But military justice should be restrained and graduated to "fit the crime." The commander should act objectively and calmly, and should never resort to scorn or ridicule. All facts should be collected and carefully considered before acting. The commander's choice of action will depend in part on the nature of the misconduct; it will also depend upon the goal sought. The commander shall consult with his servicing judge advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2354 (November 2009).

§202. Professional Standards of Conduct

A. The Louisiana Code of Judicial Conduct and Louisiana Rules of Professional Responsibility are applicable to judges and lawyers involved in Louisiana National Guard courts-martial. The Army Rules of Professional Conduct, Army Regulation 27-26 applies to all Army judge advocates and paralegals in the Louisiana National Guard. The Air Force Rules of Professional Conduct, TJS-2 applies to all Air Force judge advocates and paralegals in the Louisiana National Guard. Any allegation of a violation of such rules will be processed in accordance with Army Regulation 27-1 or TJS-2, as applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2354 (November 2009).

§203. Unlawful Command Influence

A. Convening Authority's Proper Role. The LCMJ permits the convening authority to play a dominant role in the court-martial process before and after trial. Before trial, the convening authority decides whether to convene a court-martial and refers the case to trial. After the trial, the convening authority has broad powers of clemency. But while the convening authority plays a dominant role before and after trial, the LCMJ has provisions to assure the independence of the court-martial during trial.

B. Specific Prohibitions. Superiors may not direct how subordinate commanders' act on cases over which authority to act has not been withheld or restricted. A superior who believes a specific action (such as imposing non-judicial punishment, referring a case to trial, or ordering pretrial confinement) should be taken may not order the subordinate to take the desired action. Rather, until the accused has been arraigned on a charge, the superior retains authority to order that charge referred to him for disposition; after arraignment, the superior has no authority to take action on the charge. [See LCMJ Article 37, R.C.M. 104]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2354 (November 2009).

Chapter 3. Investigating and Obtaining Evidence

§301. Sources of Information

A. A commander may receive information from many sources that an offense may have been committed by one of his Servicemembers. For example, the unit commander himself may witness an offense, someone within the unit may report the offense, or a higher headquarters may forward a report for action. When a superior commander asks that a report be investigated and the disposition reported, the request should not be construed or interpreted as a directive to take disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2355 (November 2009).

§302. Command Responsibilities

A. General. Regardless of how the commander learns of an alleged offense, he must insure that the matter is promptly and adequately investigated.

B. Reporting. Any incident which may generate widespread adverse publicity or which may damage public confidence in the organized militia shall be reported to the Adjutant General through channels.

C. Investigation. The investigation should provide the unit commander with sufficient information to make an intelligent and appropriate disposition of the incident report. The commander may conduct the inquiry himself or he may direct some other competent individual to do it. In serious cases, consideration should be given to use of law enforcement professionals, such as the Military Police or Criminal Investigation Division. The investigator should collect and present all information which may prove or disprove the allegation of misconduct. The investigation should address itself to three primary questions.

1. Was an offense committed?
2. Was a servicemember involved in the offense?
3. What is the character and military record of the suspected servicemember?

D. Impartiality. The investigator must at all times remain impartial. A one-sided investigation may lead to an injustice to the accused and an embarrassment to the command. Usually, the preliminary investigation is informal and consists of interviews with witnesses and review of police reports. The investigation must be thorough enough to provide a firm factual foundation for a determination of what happened and what should be done. This investigation is

preliminary in nature and should not be confused with the formal LCMJ Article 32 investigation, which requires sworn charges, nor the procedures for an administrative investigation under AR 15-6.

E. Disposition. Once the preliminary investigation is completed, the unit commander must make his decision. He may:

1. decide to take no action;
2. decide to take non-punitive disciplinary action;
3. decide to impose non-judicial punishment under LCMJ Article 15 (Chapter 4);
4. decide to prefer court-martial charges against the accused (Chapter 5); or
5. refer the case to appropriate civilian authorities (Chapter 5, paragraph 5-3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2355 (November 2009).

§303. Questioning Suspects and Witnesses, Generally

A. It is the duty of the unit commander to insure prompt investigation of the circumstances of an alleged crime and to examine the facts relevant to the guilt or innocence of the accused. All necessary witnesses as well as the suspects, should be interviewed. Interviews should be conducted fairly and, because memories fade, as soon as possible. The questioning of any suspect must begin with a warning of his rights under LCMJ Article 31 and his right to counsel. An investigation may be complicated or simple. In either case, the investigator will want to question both the suspect and the witnesses. Not all cases will require formal statements. In the simple case, sufficient facts may be obtained without written statements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2355 (November 2009).

§304. LCMJ Article 31 Warning/Right to a Lawyer

NOTE: (DA Form 3881 Rights Warning Procedures/Waiver Certificate, See Figure 5.7).

A. General. Servicemembers suspected of a violation of the LCMJ shall be advised of their Article 31 rights. A confession or admission made by such a suspect who has not been advised of his rights may result in the confession or admission being inadmissible against him court-martial. It is possible that an accused may still be convicted because of other evidence of guilt which is admissible.

1. Procedure. The following procedure must be carefully followed in questioning a suspect to insure that his statements are admissible in court proceedings (DA Form 3881 Rights Warning Procedures/Waiver Certificate, See Figure 5.7):

a. Before asking any questions pertaining to the case, first inform the individual: "You are suspected of committing the following offense(s) which is (are) violation(s) of the Louisiana Code of Military Justice. Before I ask you any questions, you must understand your rights. You have the right to remain silent. Any statement you make may be used as evidence against you in criminal or administrative proceedings. You have the right to consult with a lawyer before being asked any questions and to have the lawyer present with you during questioning. You may

hire a civilian lawyer at no cost to the government or a military lawyer will be detailed for you at no cost to you. Even if you decide to answer questions now without having a lawyer present, you may stop answering questions until you consult with a lawyer."

b. After this statement is made, the suspect should be asked if he understands his rights. When the investigator is satisfied that the suspect understands these rights, then the following two questions should be asked:

(a). "Do you want a lawyer?" and

(b). "Do you want to answer any questions or make a statement?"

2. The suspect may indicate that he wishes to waive his rights to remain silent and to consult with a lawyer. He must waive these rights freely, knowingly and intelligently. If he does so, he may then be questioned concerning the offense. If the suspect indicates that he wants to consult with a lawyer, he should not be questioned until a lawyer is present. If the suspect indicates that he does not wish to answer questions, he should not be questioned. In any case, it is essential that the investigator not use a tone of voice or manner which could lead the suspect to believe that he is being threatened or which plays down the importance of the warning. If this is done it may later be held that the suspect's agreement to answer questions was gained by coercion or improper inducement and his statement would be inadmissible in a trial by court-martial. It is advisable to have a disinterested witness present for such advice of rights and suspect statements. The investigator may decide not to question a suspect if other evidence is available (DA Form 3881 Rights Warning Procedures/Waiver Certificate, See Figure 5.7).

B. If the person being interviewed is not suspected of having committed an offense, but is merely a witness to the offense or has knowledge of it, there is no legal requirement to warn him of his rights. In the questioning, the investigator may begin to suspect that the witness was involved in the offense. This may happen when it appears that the witness was actually an accomplice or an accessory to the crime. The investigator should immediately then stop the questioning, inform the witness of the offense of which he is now suspected, and advise him of his rights as indicated above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2355 (November 2009).

§305. Written Statements

A. Procedure. The best means for making an accurate and complete record of the information obtained in the investigation is the sworn statement. A sworn statement (affidavit) is a written statement of facts given by a witness or suspect who states under oath or affirmation that the contents of his statement are true. All persons who are detailed to conduct the investigation are authorized by LCMJ Article 136 to administer oaths in conjunction with sworn statements taken in the course of a preliminary investigation. No special form is required to make this sworn statement. If the statement is to be taken from a suspect, DA Form 3881 (Rights Warning Procedures/Waiver Certificate) should be completed and signed by the suspect before taking his statement. A copy of DA Form 3881 is Figure 5-7, which may be used with appropriate changes in the body from

"UCMJ" to "LCMJ". [See paragraph 1-10.] After a suspect has signed the DA Form 3881 and waived his rights to remain silent, his statement may be taken on DA Form 2823 (Sworn Statement). DA Form 2823 (Sworn Statement) may also be used for the sworn statement of a witness. Since the witness is not a suspect, this latter form has no provision for a warning of his rights. The language of the witness or suspect should be used throughout the statement even though it may be vulgar, grammatically incorrect, or illogical. This insures that the writing is the witness's statement and not the composition of the investigating officer. The statement may be written in narrative form or story form, in question and answer form, or both. An appropriate oath for completing the sworn statement may be administered as follows:

1. "Do you swear (or affirm) that the statements you have made are the truth, the whole truth and nothing but the truth (so help you God)?"

2. The person administering the oath must sign his own name.

B. Guidelines for Written Statements. Sworn statements should be requested primarily from witnesses who have direct, personal knowledge of the facts. If the information offered was told to a witness by Sergeant A, the investigator should obtain a sworn statement from Sergeant A. Opinions and conclusions, without offering supporting facts, reduce the reliability of a sworn statement. The investigator should attempt to obtain the facts upon which the opinions are based, and encourage the witness to substitute facts for his opinions. The witness should initial the written statement at the beginning and the end of each page, at each erasure and correction, and where otherwise indicated on DA Form 2823. The purpose of initials is to avoid any questions of tampering after the statement has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2356 (November 2009).

§306. Oral Statements

A. When a suspect waives his rights under LCMJ Article 31 and his right to counsel, but refuses to sign a statement, the investigator may make a summary of his remarks. This summary or oral statement may be admissible in a trial by courts-martial. The oral statement of a suspect concerning his part in an offense made to a person who is not investigating the case or which was blurted out spontaneously to the investigator before the rights warning was administered may also be admissible in a trial by court-martial. If possible, have critical oral statements witnessed by at least one disinterested individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2356 (November 2009).

§307. Search and Seizure

A. General. A unit commander may lawfully seize the property of a person in his unit; however, that an unlawful search which violates a Servicemember's rights will likely result in seized items being excluded from evidence and therefore inadmissible during a court-martial. Because the law of probable cause is often difficult to apply,

Commanders shall consult with a Judge Advocate prior to taking action. This not only avoids unlawful searches and protects the Servicemember's rights, but it also insures that physical evidence will be admissible in a trial by court-martial.

B. Lawful Searches and Seizures. A commander may authorize a search if he is reasonably certain that an offense has been committed and that items connected with the offense will be found in the location he intends to search.

C. Search of Persons, Vehicles, or Residences not located on Military Property. Searches shall not be conducted of Persons, Vehicles, or Residences not located on Military Property. If a commander has a reasonable basis to search a servicemember's person, vehicle, or residence not located on Military Property, he shall immediately contact his servicing Judge Advocate in order to obtain a civilian search warrant and the assistance of local law enforcement.

D. Search of Government Quarters or Residences located on Military Property. Prior to undertaking a search of Government Quarters or Residences located on Military Property, commanders and investigators shall immediately contact his servicing Judge Advocate in order to obtain a search warrant from a Military Judge.

E. Inspections. Search and seizure requirements do not limit the commander's authority to conduct legitimate inspections including unannounced shakedown inspections. The purpose of an inspection is to promote the health, welfare, preparedness, and safety of the personnel in the unit. For example, the commander may want to insure that his servicemembers have their equipment cleaned, maintained, and properly stored and that they have no dangerous articles such as ammunition carried from the range. The inspection must apply uniformly to all Servicemembers in the area and may extend to an examination of all their belongings kept within their government living area. Although an inspection need not be previously announced, it must have a legitimate purpose and may not be a mere subterfuge or excuse for what is really an unlawful search. The commander who decides to conduct his "inspection" upon hearing of a barracks larceny, and then starts his inspection near the living area of his prime suspect probably will not later convince the military judge that he was "inspecting" rather than "searching." Since an inspection is not based on the commander's belief a crime has been committed, it is not a search. Evidence of criminal conduct discovered during the course of a legitimate inspection may be admitted at a trial by court-martial.

F. Inventories. When a servicemember is AWOL, about to be confined, or detained by civilian authorities, an inventory of the member's personal belongings is required. Evidence obtained as a result of this inventory is admissible in a court-martial. Having a disinterested witness participate in this inventory is advisable.

G. Consent Searches. A person may consent to a search of his person or property, or both, unless control over such property has been given to another. A person may grant consent to search property when the person exercises control over that property. Consent may be limited in any way by the person granting consent, including limitations in terms of time, place, or property, and may be withdrawn at any time [See also para 3-8(C).] The issue of whether or not consent has been granted is a question of fact to be determined after

a thorough examination of the circumstances relative to the alleged consent.

H. Searches of Government Property. Government property may be searched unless the person to whom the property is issued or assigned has a reasonable expectation of privacy therein at the time of the search. Under normal circumstances, a person does not have a reasonable expectation of privacy in government property that is not issued for personal use. Wall or floor lockers in living quarters issued for the purpose of storing personal possessions normally are issued for personal use; however, the determination as to whether a person has a reasonable expectation of privacy in government property issued for personal use depends on the facts and circumstances at the time of the search. [See also para 3-8(c).]

I. Searches of Open Fields or Woodlands. A search of open fields or woodlands does not require the issuance of a search warrant or search authorization.

J. Search of Person or Vehicle Located on Military Post, Reservation or Installation. When properly notified, usually by a warning sign posted conspicuously at the post, reservation or installation gate, individuals entering or leaving such post, reservation or installation give implied consent to the search of their persons, possessions, and vehicles and may be so searched. This authority includes Louisiana National Guard armories and facilities, under the provisions of La. R.S. 29:28.1.

K. Canine Searches. If a commander has a reasonable belief that illegal drugs are present in the area under his command, that commander may authorize a canine search of either the barracks or POV's located in that area and any contraband found upon alert of the canine is legal and admissible evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2356 (November 2009).

§308. Authority to Search

A. A search and seizure is lawful in the following situations:

1. Apprehension. A Servicemember may be searched at the time and place of a lawful apprehension. The purpose of the search is to discover weapons and to prevent the destruction of evidence. The search is limited to the person of the Servicemember and the area within his immediate control. For example, the area within his immediate control may include a nearby open locker within his reach, but not the entire room.

2. Searches Authorized by the Commander

a. Areas subject to search. A commander has authority to conduct or direct a search of any person or property located in a place under his control if there is probable cause to justify the search. Searches of areas outside the commander's immediate control should be undertaken only after coordination with the proper command authority.

b. Requirement of Probable Cause. Before a commander may authorize a search of a person or area in a place under his control, he must at least have probable cause to believe:

i. a crime is being committed or has been committed;

- ii. the person to be searched committed or is involved in the crimes;
- iii. the evidence of the crime is now where the commander plans to search; and
- iv. the information is credible and the source of the information is reliable.

c. Probable cause to search exists when there is a reasonable belief that a person, property, or evidence sought is located in the place or on the person to be searched. A search authorization may be based upon "hearsay" evidence in whole or in part. There must be more than mere suspicion in the mind of the commander, but absolute proof beyond a shadow of a doubt is not required. In other words, probable cause lies somewhere between suspicion and actual knowledge. The commander must personally conclude, on the basis of information presented to him, that the contraband or evidence of a crime is at that time likely to be in the possession of the individual or on the premises to be searched. The commander's determination that probable cause exists must be reasonable and must be based on facts. It may not be based only on the conclusions of others. It is of no importance that a CID agent, a first sergeant, or an informant is aware of sufficient facts to provide probable cause, unless those facts are given to the only individual who orders or authorizes the search - the commander. The commander must believe that the person furnishing the information is reliable and that he had a sound basis for his information. In case of doubt, the commander should consult a Judge Advocate. DA Form 3745 should be used by the commander when authorizing a search.

d. Delegation of Authority. A unit commander may delegate his authority to search. The delegation of this authority should be limited to those persons whose experience, responsibilities, and temperament will insure a fair and impartial determination of probable cause. Commanders should consult the DRU SJA in order to delegate his authority to search.

3. Consent Searches

a. Probable cause is not required when a person with possession or control of property freely gives his consent to the search of his property. Because consent to the search is a waiver of the constitutional right to be free from unreasonable searches, the government must be able to produce clear and convincing evidence that the consent was voluntary and not a mere submission to authority. In order to establish voluntary consent, it is recommended that the suspect be told:

- i. the specific items the search is expected to uncover;
- ii. the specific area the search will cover;
- iii. that he has a legal right to withhold his consent;
- iv. that he cannot be forced to submit to a search unless it is properly authorized; and
- v. that any evidence found in the search can be used against him.

b. It is advisable for a commander to have an unbiased and trustworthy witness present when a servicemember consents to a search. Should consent become an issue at the trial, the witness can verify the nature of the consent. If a consent search uncovers evidence of criminal

conduct, the evidence will be admissible at trial. It does not matter that the consent was obtained without probable cause.

4. Open View. Evidence of criminal conduct which is in open view or located in a public area, such as a day room, may be seized without consideration of the requirements of consent or probable cause.

5. Search Warrant. Evidence may be seized pursuant to a search warrant issued by a proper magistrate. In the event that a search warrant is deemed necessary, the commander should consult a Judge Advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2357 (November 2009).

§309. Safeguarding Evidence, Generally

A. Drugs, weapons, clothing, and other items related to an alleged offense are physical evidence of crimes. The unit commander must preserve and safeguard any physical evidence in his custody. Physical evidence should be handled by as few persons as possible since anyone who touches it may be required to appear at the trial. In order to properly safeguard physical evidence, it must be carefully marked to insure the later identification. A chain of custody document must be initiated, such as DA Form 4137, Physical evidence should be turned over to investigating officer as soon as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2358 (November 2009).

§310. Chain of Custody

A. When an item of physical evidence is introduced at trial, counsel must show that it is the same item that was found at the scene of a crime or otherwise connected with the offense and that the item has not been materially altered. The chain of custody document is a written record listing all persons who have handled an item from the time it was originally identified as evidence until the time of trial. Therefore, secure storage for such evidentiary items is crucial. Coordination with the servicing staff Judge Advocates and, if available, active component CID personnel and/or local law enforcement authorities should prove useful in this regard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2358 (November 2009).

§311. Marking Evidence

A. Physical evidence must be marked immediately by the first person who assumes custody to insure that he will be able to identify it at trial. This mark may be placed on the item itself and is usually the person's initials, the date, and time. The chain of custody record should briefly describe the item and the date and place of its discovery. One acceptable method of marking difficult items is with typewriter correction fluid, which will accept pen or pencil markings once dry. If the evidence simply cannot be marked, it should be placed in a sealed container and the container suitably marked and dated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2358 (November 2009).

§312. Perishable and Unstable Items

A. Perishable and unstable items of evidence require special attention. They must be photographed or otherwise preserved. Professional assistance is necessary, for example, to preserve a fingerprint or a tire track in the dirt. Military police, CID, and/or local law enforcement officials may be of assistance in this regard. Contact your Judge Advocate if in doubt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2359 (November 2009).

§313. Flagging Action, Generally

A. When it appears that action may be initiated which could result in a court-martial, disciplinary action, or elimination proceedings, the commander must initiate flagging action against the servicemember pursuant to AR 600-8-2, (DA Form 286, Suspension of Favorable Actions). This suspends all favorable personnel action. In no case will flagging action be used as a punitive or disciplinary measure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2359 (November 2009).

§314. Courts of Inquiry

A. General. A court of inquiry is a formal, fact-finding tribunal authorized by LCMJ Article 135. It may be convened by the Governor to investigate any matter of concern to the Louisiana National Guard whether or not the persons involved have requested such an inquiry.

B. Policy. LANG policy is that a court of inquiry will not be convened to investigate a particular matter to ascertain the facts if there are other satisfactory means available (prescribed by law or regulation or authorized by the customs of the service). Under this policy, it is proper to convene a court of inquiry only when-

1. The matter to be investigated is one of grave importance to the Louisiana National Guard or an individual.

2. The testimony is expected to be so diverse, complicated, conflicting, or difficult to obtain that a court of inquiry can best:

- a. procure the pertinent evidence;
- b. ascertain the true facts; and/or
- c. assist the convening or superior authority in determining what action should be taken.

3. Procedures. The procedures applicable to courts of inquiry shall parallel those prescribed in active component regulations, except as otherwise specifically set forth in LCMJ 135 or necessitated by the peculiar nature of the Louisiana National Guard. [See AR 27-10, Chapter 10.] Counsel appointed to advise a court of inquiry shall advise the president on issues of procedural and substantive law, and the president's ruling on such issues shall be binding on the court and all participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2359 (November 2009).

Chapter 4. Non-Judicial Punishment

§401. Applicability, Generally

A. A commanding officer of the organized militia may impose non-judicial punishment for minor offenses upon military personnel of his command under the provisions of LCMJ Article 15. He should distinguish non-judicial punishment from non-punitive disciplinary measures, such as reprimands, administrative reductions, and corrective training. Non-judicial punishment is a disciplinary measure more serious than the administrative corrective measures, but less serious than trial by court-martial. Non-judicial punishment provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in servicemembers without the stigma of a court-martial conviction. It is important to note that non-judicial punishment is imposed to correct misconduct which violates the LCMJ.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2359 (November 2009).

§402. Prerequisites

A. General. Before taking action under LCMJ Article 15, the commanding officer must satisfy himself that:

1. based on a swiftly conducted, fair, and impartial preliminary factual investigation, the alleged misconduct actually was committed by the accused Servicemember (see Chapter 3);

2. the misconduct was an offense under the Louisiana Code of Military Justice. This can be verified by consulting the "elements of the offense" analysis found under the analogous UCMJ punitive article in Part IV of the most current Manual for Courts Martial;

3. non-judicial punishment is appropriate to the offense in view of the nature and circumstances of the alleged misconduct and the Servicemember's past record. Stated another way, non-punitive measures are simply inadequate or inappropriate, and the violation is of a "minor" nature not warranting court-martial.

B. Minor Offenses. Whether an offense is "minor" depends on several factors: the nature of the offense and the circumstances surrounding its commission, the offender's age, rank, duty assignment, record, and experience. Ordinarily, a "minor offense" would exclude conduct that would warrant a dismissal, bad conduct, or dishonorable discharge or constitute a "felony" under civilian law (i.e. punishable by imprisonment at hard labor if convicted). Generally speaking, the term "minor" does not include offenses involving any greater degree of criminality than is involved in the average offense tried by summary court-martial. However, this rule is flexible, and rests with the commander's discretion. The decision whether an offense is "minor" is a matter of discretion for the commander imposing non-judicial punishment, but non-judicial punishment for an offense other than a minor offense (even though thought by the commander to be "minor") is not a bar to trial by court-martial for the same offense. [See R.C.M..

907(b)(C)(iv).] However, the accused may show at trial that non-judicial punishment was imposed, and if the accused does so, this fact must be considered in determining an appropriate sentence. [See Article 15(f); R.C.M. 1001(c)(B).]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2359 (November 2009).

§403. Persons Who May Be Punished

A. The Adjutant General reserves disposition authority over all officer and senior noncommissioned officer in the grade of E7 and above offenses. Unit commanders will forward all offenses of officer and senior noncommissioned officer offenses through the DRU commanders to The Adjutant General.

B. Except as provided by subparagraph (a) of this Paragraph, unit commanders may impose non-judicial punishment upon enlisted members of their command. For purposes of Article 15, military personnel are considered to be "of the command" of a commander if they are:

1. assigned to an organization commanded by that commander.
2. affiliated with the command (by attachment, detail, or otherwise) under conditions, either expressed or implied, which indicate that the commander and the commander of the unit to which they are assigned are to exercise administrative or disciplinary authority over them.
3. unit commanders may impose non-judicial punishment upon enlisted members of their command.

C. Of the Command. To determine if an individual is "of the command" of a particular commanding officer, refer first to those written or oral orders or directives that affect the status of the individual. If orders or directives do not expressly confer authority to administer non-judicial punishment to the commander of the unit with which the servicemember is affiliated or present (as when, for example, they contain no provision attaching the servicemember "for disciplinary purposes"), consider all attendant circumstances, such as:

1. the phraseology used in the orders.
2. where the servicemember slept, ate, was paid, performed duty, the duration of the status, and other similar factors.

D. If orders or directives include such terms as "attached for administration of military justice," or simply "attached for administration," the individual so attached will be considered to be of the command of the commander of the unit of attachment for the purpose of Article 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2360 (November 2009).

§404. Persons Who May Impose Non-judicial Punishment

A. General. Non-judicial punishment may be imposed by any commanding officer, provided that a superior commander has not restricted or withheld his authority to impose punishment on certain categories of military personnel or offenses (e.g. officers, senior NCO's, drug

offenses, etc.) For special rules, see paragraph 4-7 and Figure 4-1.

B. Delegation. The authority given to a commander under Article 15 is an attribute of command and cannot be delegated except as follows:

1. The Adjutant General may delegate his authority under Article 15 to an Assistant Adjutant General.
2. The authority delegated may only be exercised when the delegate is senior in rank to the person punished. A delegate need not, when acting as a superior authority on an appeal, be senior in rank to the imposing commander.
3. A delegation of authority shall be in writing, and unless limited by its terms, the officer to whom this authority is granted may exercise any power that is possessed by the officer who delegated the authority.
4. Notification that the delegation has been terminated should be made in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2360 (November 2009).

§405. Policies

A. General. Commanders are responsible for good order and discipline in their commands. Generally, discipline can be maintained through effective leadership including, when necessary, administrative corrective measures. Non-judicial punishment is ordinarily appropriate when administrative corrective measures are inadequate due to the nature of the minor offense or the record of the Servicemember, unless it is clear that only trial by court-martial will meet the needs of justice and discipline. Non-judicial punishment shall be considered on an individual basis.

B. Proportionality. Commanders considering non-judicial punishment should consider the nature of the offense, the record of the Servicemember, the needs for good order and discipline, and the effect of non-judicial punishment on the Servicemember and the Servicemember's record. A commander should employ his power under LCMJ Article 15 in every case in which punishment is deemed necessary and that section applies, unless it is clear that punishment under that section would not meet the ends of justice and discipline. Superior commanders should restrain any tendency of subordinate commanders to resort prematurely or unnecessarily to court-martial jurisdiction for the punishment of offenders. The punitive power under Article 15 must be used judiciously and with restraint. Punishment that is too severe creates resentment and bitterness and frustrates corrective efforts. Conversely, to be effective, the punishment must be adequate and proportional to deter the offender and others from committing the same offenses.

C. Suspension of Article 15. Commanders should consider suspending all or part of any punishment selected under Article 15, particularly in the case of first offenders or when significant extenuating or mitigating matters are present. Suspension provides an incentive to the offender and gives an opportunity to the commander to evaluate the offender during the period of suspension. [See paragraph 4-23 and Figure 4-4.] Additionally, commanders must seriously consider the collateral effects of a reduction in pay grade on the accused before imposing such a penalty.

D. Referral within Chain of Command. Although a superior commander has authority to impose disciplinary punishment upon military subordinates of his command, it is customary for such superior commander to refer any breach of discipline on the part of an enlisted person in grade E-6 or below who is a member of a subordinate unit to the attention of the immediate commander of the offender. If the officer, to whom information concerning a breach of discipline is forwarded, as contemplated in this paragraph, lacks jurisdiction to impose the most appropriate punishment, he should forward the matter to a superior authority. DA Form 5109-R, Request to Superior to Exercise Article 15 Jurisdiction, may be modified and used for these purposes, or the request can be made in memorandum format. [See Figure 4-7.]

E. Personal Consideration Required. A commander who is considering a case for disposition under Article 15 will exercise personal discretion in evaluating each case, both as to whether non-judicial punishment is appropriate, and, if so, as to the nature and amount of punishment appropriate. No superior may direct that a subordinate authority impose non-judicial punishment in a particular case. No superior may issue regulations, orders, or "guides" which suggest to subordinate authorities that certain categories of minor offenses be disposed of by non-judicial punishment instead of by court-martial or administrative corrective measures, or that predetermined kinds or amounts of punishments be imposed for certain classifications of offenses that the subordinate considers appropriate for disposition by non-judicial punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2360 (November 2009).

§406. Authorized Punishments

A. LCMJ Article 15(B) proscribes the maximum authorized punishments a commander may impose under his non-judicial punishment authority. Figure 4-1 contains a chart outlining permissible Article 15 maximum punishments and the commanders authorized to impose such within the LANG. No additional punishments may be imposed under Article 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2361 (November 2009).

§407. Special Rules and Limitations

A. Combinations of Punishments. With the following exception, punishment authorized under Article 15 may be combined. No two or more of the punishments of arrest in quarters, extra duties, and restriction may be combined to run consecutively in the maximum amount imposable for each. Whenever any of those punishments are combined to run consecutively, there must be an apportionment.

B. Duration of Punishments. A withholding of privileges, a restriction to certain specified limits or the imposition of extra duties, when imposed as non-judicial punishment, may not extend beyond the last day of the training period (MUTA or AT) during which such punishment was imposed. No such limitation applies to fines or forfeitures.

C. Extra Duties Considerations. No extra duties imposed as non-judicial punishment which tend to degrade the grade of the person upon whom they are imposed may be imposed upon non-commissioned officers.

D. Forfeiture of Pay Considerations. Whenever a punishment of forfeiture of pay is imposed under LCMJ Article 15, the forfeiture may apply to pay accruing on or after the date that punishment is imposed and to any pay accrued after that date.

E. Double Punishment Prohibited. When non-judicial punishment has been imposed for an offense, punishment may not again be imposed for the same offense under Article 15.

F. Increase in Punishment Prohibited. Once non-judicial punishment has been imposed, it may not be increased, upon appeal or otherwise.

G. Multiple Punishments Prohibited. When a commander determines that non-judicial punishment is appropriate for a particular servicemember, all known offenses determined to be appropriate for disposition by non-judicial punishment and ready to be considered at that time, including all such offenses arising from a single incident or course of conduct, shall ordinarily be considered together, and not made the basis for multiple punishments.

H. Statute of Limitations. Except as provided in LCMJ Article 43(d), non-judicial punishment may not be imposed for offenses which were committed more than 2 years before the date of imposition. [See LCMJ Article 43(c).]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2361 (November 2009).

§408. Initial Notification

A. The first steps in an Article 15 proceeding are the commander's oral and written notification to the servicemember. The elements of this step are stated on the DA Form 2627, Record of Proceedings under Article 15, UCMJ. Located at Appendix C is a "Suggested Guide for Conduct of Non-judicial Punishment Proceedings." The initial notification contains the following elements:

1. Statement of Offense. The commander who intends to impose the punishment must inform the member of that intent. The initial notification must include a brief statement of the offense that the commander believes the member has committed, including the specific Article(s) of the LCMJ. The commander shall prepare the charge sheet only with the advice and assistance of a Judge Advocate or a Paralegal. In drafting Item 1 of the DA Form 2627, the paralegal should use the model sample specification forms in Part IV, Punitive Articles, of the Manual for Courts-Martial by selecting the UCMJ Punitive Article which corresponds to the LCMJ Punitive Article under which the accused is being punished. The notice should include a brief summary of the information upon which the allegations are based or a statement that the member may, upon request, examine available statements and evidence.

2. Right to Demand Trial by Court-Martial. Unless the member is attached to or embarked in a vessel, the member has a right to demand court-martial in lieu of the Article 15. If the member has this right, the commander must so advise the individual, covering the following specific facts:

a. the member may demand trial by court-martial in lieu of non-judicial punishment;

b. the maximum punishment which the non-judicial punishment authority may impose by non-judicial punishment;

c. if trial by court-martial is demanded, charges could be referred for trial by summary, special, or general court-martial along with an explanation of the maximum possible punishments those courts-martial may adjudge; that the member may not be tried by summary court-martial over the member's objection; and that at a special or general court-martial the member has the right to be represented by military counsel at no personal expense.

3. Rights under Article 31(b), LCMJ. The commander must inform the member that under Article 31(b), the member has a right to remain silent and that anything said by the individual can be used against him.

4. Right to Consult Counsel or Representative. The commander shall inform the individual of the right to consult counsel or his personal representative concerning the proposed disciplinary action. At the time of the initial notification, the commander shall inform the servicemember of the period of time which the servicemember has to consult with counsel or personal representative and make the necessary decisions on such matters as the right to demand court-martial. The servicemember shall be afforded the opportunity to view the video and complete the survey provided by LANG TDS on State Judge Advocate's site Louisiana Knowledge Online (LKO) at <http://nglashcbstvitsp1/SiteDirectory/sja/default>.

Unit personnel shall provide a method for the servicemember to view such video if the servicemember does not have the ability to do so. If the servicemember wishes to consult counsel after viewing the video, then unit personnel shall provided him with the contact information for LANG TDS. In no event shall a servicemember be given less than 48 hours, to consult with counsel, if he chooses to do so. The commander must afford the servicemember a reasonable amount of time to consult with counsel. In determining the amount of time afforded to servicemember to consult with counsel, the commander should consider such factors as the gravity of the offense and the availability of counsel. If, after viewing the LANG TDS video, the servicemember chooses not to avail himself to the right to counsel, then the commander may precede with the remainder of the article 15 preceding and does not have to wait a full 48 hours.

5. Right to Informal Public Hearing. The commander must inform the servicemember of the right to fully present evidence, and to be accompanied by a person to speak on his behalf. The commander must also inform the servicemember that, upon request, the hearing will be open to the public unless military exigencies or security interests preclude public disclosure.

6. Maximum Possible Punishments. While the servicemember is not entitled to be informed as to the type or amount of punishment actually contemplated by the commander if he does not demand trial by court-martial, he will in each case be informed of the maximum punishment which may be imposed under Article 15 by the officer who is to impose the punishment, and, if he specifically requests such, he shall be advised of the maximum punishment that could be adjudged by court-martial upon conviction for the

offense involved. Figure 4-1 contains a chart outlining permissible Article 15 maximum punishments and the commanders authorized to impose such within the LANG. Figure 6-2 contains a table outlining permissible maximum punishments under courts-martial.

7. Possibility of Counsel. The servicemember will also be told that, if he demands trial, trial could be by SCM, SPCM, or GCM. The servicemember will also be told that he may object to trial by SCM and that at SPCM or GCM he would be entitled to representation by qualified LANG TDS, or by civilian counsel obtained at no government expense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2361 (November 2009).

§409. Demand for Trial by Court-Martial

A. Except in the case of a member attached to or embarked in a vessel, no non-judicial punishment under the provisions of LCMJ Article 15 may be imposed upon any member of the Louisiana National Guard if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. In such a case, the Article 15 must terminate, and the commander must then decide whether to prefer court-martial charges and the level of court. The commander need not prefer the charges, but will ordinarily do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2362 (November 2009).

§410. Waiver of Court-Martial and Failure to Either Submit Matters or Demand Hearing

A. If the member waives court-martial and neither submits matters in his own behalf nor demands a hearing, the commander may immediately impose punishment if convinced that a violation has been committed by the member.

§411. Waiver of Court-Martial and Hearing and Submission of Matters

A. If the servicemember waives both court-martial and an Article 15 hearing but submits matters orally or in writing in defense, extenuation, or mitigation, the commander must consider these matters before deciding whether to impose non-judicial punishment. If the matters persuade the commander that the servicemember is not guilty or that there is some other valid reason for not punishing the servicemember, the commander simply terminates the Article 15 proceeding. If, after considering the matters, the commander is still convinced that the servicemember is guilty and that non-judicial punishment is appropriate, the commander proceeds to impose punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2362 (November 2009).

§412. Waiver of Court-Martial and Demand for Hearing

A. General. If the servicemember waives court-martial but demands an Article 15 hearing, the commander must arrange for and conduct the hearing before deciding whether to impose non-judicial punishment. The commander himself

must conduct the hearing except in rare circumstances where it is not feasible for him to do so. In those circumstances, the commander must appoint another officer to conduct the hearing. After conducting the hearing, the appointed officer should submit written recommendations to the commander.

B. Spokesman. During the hearing the servicemember may be represented by a spokesman. The individual need not be an attorney, and the spokesman's participation in the case must be completely voluntary. In addition, no travel fees or other unusual costs will be incurred at government expense to insure the spokesman's presence at the hearing. Neither shall the servicemember's desire to be represented by a spokesman be permitted to cause unreasonable delay in the disposition of his case.

C. Accused Witnesses. The servicemember may indicate the witnesses he desires produced at the hearing. If the witnesses are reasonably available, the commander must arrange for their presence. No witness or transportation fees will be incurred at government expense to insure the witnesses' presence. Reasonably available witnesses include those present for duty at the installation concerned and those whose presence can be arranged without the expenditure of government travel funds and whose attendance at the hearing will not materially delay the proceedings.

D. Evidentiary Considerations. During the hearing, neither the member nor the spokesman may examine or cross-examine witnesses unless the commander allows them to do so. However, the Servicemember or the spokesman may brief the commander on the relevant issues and areas. The commander should explore those issues and areas in questioning the witnesses. The imposing commander is not bound by the formal rules of evidence before courts-martial (except privileges), and may consider any matter, including unsworn statements, that the commander reasonably believes to be relevant to the offense.

E. Punishment Warranted. If the imposing commander decides to impose punishment, ordinarily the commander will announce the punishment to the servicemember. The commander may, if he desires to do so, explain to the servicemember why a particular punishment was imposed.

F. Punishment Not Warranted. If, after evaluation of all pertinent matters, the imposing commander determines that non-judicial punishment is not warranted, the servicemember is notified that the proceedings have been terminated and all copies of DA Form 2627 are destroyed.

G. Appellate Rights. After punishment is imposed the appellate rights and procedures which are available to the servicemember are explained to the servicemember. (Refer to Paragraph 4-16)

H. Subsequent Court-Martial. The imposition and enforcement of disciplinary punishment under LCMJ Article 15 for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under LCMJ Article 15. However, the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty by court-martial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2362 (November 2009).

§413. Hearing Procedures

A. General. Unless the servicemember demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing. Located at Appendix A of this Regulation is a "Suggested Guide for Conduct of Non-judicial Punishment Proceedings." The major functional subdivisions of the hearing consist of the following:

1. consideration of evidence, written or oral, against the servicemember.
2. examination of available evidence by the servicemember.
3. presentation by servicemember of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation.
4. determination of guilt or innocence by the imposing commander.
5. imposition of punishment or termination of the proceedings;
6. explanation of right to appeal.

B. Not Adversarial Proceedings. Article 15 proceedings, unlike courts-martial, are not adversarial in nature. Thus, no "examination" or "cross-examination" of witnesses is permitted by the servicemember or his spokesperson unless authorized by the imposing commander. The Military Rules of Evidence, other than with respect to privileges, do not apply at non-judicial punishment proceedings. Any relevant matter may be considered, after proper notification to the servicemember of the information against him and relating to the offense(s) alleged and allowing the servicemember opportunity to examine documents or physical objects against him that are being considered by the non-judicial punishment authority.

C. Open/Closed Hearings. Ordinarily, hearings are open. Though the servicemember may request that his hearing be open or closed, that decision rests solely within the discretion of the imposing commander. An "open hearing" is a hearing open to the public, but does not require the commander to hold the proceeding in a location different from that in which he conducts normal business, i.e., the commander's office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2363 (November 2009).

§414. Non-Judicial Punishment Based on Record of Court of Inquiry or Other Investigative Body

A. General. Non-judicial punishment may be based on the record of a court of inquiry or other investigative body, in which proceeding the member was accorded the rights of a party. No additional proceeding in the nature of a hearing is required.

B. Procedure. The servicemember shall be informed in writing that non-judicial punishment is being considered based on the record of the proceedings in question, and given the opportunity, if applicable, to refuse non-judicial punishment. If the servicemember does not demand trial by

court-martial, the servicemember may submit, in writing, any matter in defense, extenuation, or mitigation, to the officer considering imposing non-judicial punishment, for consideration by that officer to determine whether the member committed the offenses in question, and, if so, to determine an appropriate punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2363 (November 2009).

§415. Specific Punishments

A. General. Whether to impose punishment and the nature of the punishment are the sole decisions of the imposing commander. However, commanders are encouraged to consult with their NCO's on the appropriate type, duration, and limits of punishment to be imposed. Additionally, as NCO's are often in the best position to observe a servicemember undergoing punishment and evaluate daily performance and attitude, their views on clemency should be given careful consideration.

B. Restriction. Restriction may be imposed with or without suspension from duties. Normally, the limits of the restriction should be announced at the time punishment is imposed. However, the imposing commander, a successor-in-command, and any superior authority may change the specified limits of restriction; e.g., if a servicemember is transferred or assigned duties at another location after imposition and before the term or restriction is completed. The limits of restriction, as changed, will be generally no more restrictive (unless required by military exigencies) than the limits originally imposed. Restrictions during periods other than IDT or AT require that the accused be placed on duty orders.

C. Extra Duties. Extra duties may be required to be performed at anytime and, within the duration of the punishment, for any length of time. Extra duties during periods other than IDT or AT require that the accused be placed on duty orders. Extra duties may include the performance of fatigue duty or of any other military duty. No extra duty may be imposed that:

1. constitutes cruel or unusual punishment or a punishment not sanctioned by the customs of the service (e.g., using the offender as a personal servant);

2. is a duty normally intended as an honor, such as assignment to a guard of honor;

3. is required to be performed in a ridiculous or unnecessarily degrading manner (e.g., an order to clean a barracks floor with a toothbrush);

4. constitutes a safety or health hazard to the offender;

or

5. would demean the servicemember's position as a NCO or specialist.

D. Reduction in Grade. The grade from which reduced must be within the promotion authority of the imposing commander or of any officer subordinate to the imposing commander. For the purposes of this Regulation, the imposing commander or any subordinate commander has "promotion authority" within the meaning of Article 15 if the imposing commander has the general authority to appoint to the grade from which reduced or to any higher grade. When a person is reduced in grade as a result of an unsuspended reduction, the date of rank in the grade to which reduced is

the date the punishment of reduction was suspended. If the reduction is suspended either on or after the time the punishment was imposed, or is set aside or mitigated to forfeiture, the date of rank in the grade held before the punishment was imposed remains unchanged. If a suspension of the reduction is vacated, the date of rank in the grade to which reduced as a result of the action is the date the punishment was originally imposed, regardless of the date the punishment was suspended or vacated.

E. Effective Date and Execution of Punishments. Reduction and forfeiture of pay, if unsuspended, take effect on the date the commander imposes the punishments. Other punishments, if unsuspended, will take effect and be carried into execution on the date they are imposed, unless the imposing commander prescribes otherwise. In those cases where the execution of the punishment legitimately must be delayed (e.g., the servicemember is hospitalized, placed on quarters, authorized emergency leave or on brief period of TDY or a brief field problem) the execution of the punishment should normally begin immediately thereafter. A sentence to forfeiture of pay may be collected from active duty and inactive-duty training pay during subsequent periods of duty. If the servicemember timely files an appeal and specifically requests interruption of the performance of the punishment pending action on his appeal, the request should be granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2364 (November 2009).

§416. Appeals, Generally

A. Timeliness. Only one appeal is permissible under Article 15 proceedings. An appeal not made within a reasonable time may be rejected as untimely by the superior authority. A reasonable time will vary according to the situation; however, an appeal (including all documentary matters) submitted more than five days after the punishment is imposed will be presumed to be untimely unless the superior commander, in his sound discretion for good cause shown, determines it to be timely.

B. Change of Intention. If, at the time of imposition of punishment, the servicemember indicates a desire not to appeal, the superior authority may reject a subsequent election to appeal, even though it is made within the 5 day period.

C. Vacation of Suspended Punishment. Although a suspended punishment may be appealed, no appeal is authorized from the vacation of a suspended punishment. Vacation of a suspended non-judicial punishment is not itself non-judicial punishment and additional action to impose non-judicial punishment for a violation of a punitive article of the code upon which the vacation action is based is not precluded thereby. The accused is entitled to be confronted with the allegations that give rise to the vacation of a suspended punishment. Though no right exists to a full hearing, the accused should, in the absence of extraordinary circumstances, be given the opportunity to consult with a Judge Advocate and to present a written response to the allegations raised by the convening authority. [See Para 4-24 and Figure 4-.8]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2364 (November 2009).

§417. Who May Act on Appeal

A. General. The authority next superior to the commander will act on an appeal if the servicemember punished is still of the command of that officer at the time of appeal.

B. Next Superior Rule. If the commander has acted under a delegation of authority, the appeal will be acted on by the authority next superior to the delegating officer. If, at the time of appeal, the servicemember is no longer of the imposing commander's command, the authority next superior to the servicemember's present commander (who can impose the same kind and amount of punishment as than imposed or resulting from subsequent modifications) will act on the appeal. The authority "next superior" to an imposing commander is normally the next superior in the chain of command or such other authority as may be designated by competent authority as being next superior for the purposes of Article 15.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2365 (November 2009).

§418. Procedure for Submitting Appeal

A. All appeals will be made on DA Form 2627 or DA Form 2627-1 and forwarded through the imposing commander (or successor in command, when applicable) to the superior authority. The superior authority will act on the appeal unless otherwise so directed by competent authority. The servicemember may state reasons or attach documents to the appeal for consideration, but is not required to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35: 2365 (November 2009).

§419. Action by the Imposing Commander on Appeal

A. General. The imposing commander or successor-in-command may take any action on the appeal with respect to the punishment that the superior authority could take (see paragraph 4-20). If the imposing commander or successor-in-command suspends, mitigates, remits, or sets aside any part of the punishment, this action will be so recorded according to instructions on the DA Form 2627 or 2627-1.

B. Inquiry. If such action (suspension, mitigation, remission or set aside) is taken by the imposing commander, the appealing member (the "appellant") will be so advised and asked to state whether, in view of this action, the appellant wishes to withdraw the appeal. Unless the appeal is voluntarily withdrawn, the appeal will be forwarded to the appropriate superior authority. An officer forwarding the appeal shall attach a detailed report of the incident, any comments he deems appropriate, and the appellant's permanent record.

C. Presumption. Any allegations by the appellant, if un rebutted by the forwarding commander, may be accepted as valid and considered by the reviewing officer.

D. Consulting Legal Counsel Availability. The imposing commander (or successor-in-command) will make available to the servicemember reasonable assistance (legal and

otherwise) in preparing the appeal, and will promptly forward the appeal to the appropriate superior authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35: 2365 (November 2009).

§419. Action by the Superior Authority on Appeal

A. General. The superior authority to which the appeal is made shall refer every such appeal to the Judge Advocate Office of his assigned or detailed Special Courts-Martial Convening Authority for review and comment as to legal sufficiency prior to action. He may conduct an independent inquiry into the case if necessary or desirable. In acting on an appeal, the superior authority may exercise the same powers with respect to the punishment imposed as may be exercised by the imposing commander or the imposing commander's successor-in-command. However, the superior authority cannot change a filing determination. A timely appeal does not terminate merely because a servicemember is discharged from the service. It will be processed expeditiously to completion by the superior authority.

B. Delay. Action by the superior authority on appeal should ordinarily be accomplished within 30 days after imposition of non-judicial punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35: 2365 (November 2009).

§420. Action by a Judge Advocate on Appeal

A. General. The Judge Advocate review on Article 15 appeals may be either oral or written. If given orally, that fact and the name of the Judge Advocate who rendered the advice will be recorded on the DA Form 2627, item 8. The Judge Advocate is not limited to an examination of written matters of the record of proceedings, and may make any inquiries that are necessary. An example of the Judge Advocate Review on Appeal is located at Figure 4-6.

B. Inquiry. The Judge Advocate Review shall address the following issues:

i. the appropriateness of the punishment.

ii. whether the proceedings were conducted under law and regulations.

C. Review Standard. Only deviations that substantially affect the proceedings shall give cause for relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35: 2365 (November 2009).

§422. Clemency, Generally

A. Usefulness. The full effectiveness of non-judicial punishment cannot be realized unless the commander is aware of his powers of "clemency," including the authority to suspend, remit, or set aside punishment if warranted by the circumstances of the case. These powers give the commander an effective means of rehabilitating the offender which are often more valuable than his mere power to punish.

B. Recording Requirement. Any action of suspension, mitigation, remission, or setting aside taken by an authority will be recorded according to published guidance on DA Form 2627-2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35: 2365 (November 2009).

§423. Suspension

A. General. Ordinarily, punishment is suspended to grant a probational period during which a servicemember may show that he deserves a remission of the remaining suspended punishment. An executed punishment of reduction or forfeiture may be suspended only within a period of six months after the date imposed. Suspension of non-judicial punishment may not be for a period longer than six months from the suspension date, and the expiration of the current enlistment or term of service of the servicemember involved automatically terminates the period of suspension. [See Figure 4-8.]

B. Remission. Unless the suspension is sooner vacated, suspended portions of the punishment are remitted, without further action, upon the termination of the period of suspension.

C. Conditions of Probation. Unless otherwise stated, an action suspending a punishment includes a condition that the servicemember not violates any punitive article of the code. The non-judicial punishment authority may specify in writing additional conditions of the suspension. Further misconduct by the servicemember, within the period of the suspension, may be grounds for vacation of the suspended portion of the punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2366 (November 2009).

§424. Vacation

A. General. A commander may vacate any suspended punishment provided the punishment is of the type and amount the commander could impose and where the commander has determined that the servicemember has committed misconduct (amounting to an offense under the LCMJ) during the suspension period. A suspension may be vacated by any non-judicial punishment authority or commander competent to impose upon the servicemember concerned punishment of the kind and amount involved in the vacation of suspension. [See Para 4-16(c) and Figure 4-9.]

B. Procedure. The commander is not bound by the formal rules of evidence before courts-martial, and may consider any matter, including unsworn statements; the commander reasonably believes to be relevant to the misconduct. There is no appeal from a decision to vacate a suspension. Unless the vacation is undertaken prior to the expiration of the stated period of suspension, the suspended punishment is automatically remitted without further action. Misconduct resulting in vacation of a suspended punishment may also be the basis for the imposition of another Article 15.

C. Servicemember's Right to Rebut. The commander should, unless impracticable, give the servicemember an opportunity to rebut the information on which the proposed vacation is based. This may be by personal appearance or in writing, at the discretion of the commander. Failure to provide prior notification and/or an opportunity to appear or

otherwise respond to the basis of a proposed vacation will not, by itself, render a vacation action void, though it may render the record of non-judicial punishment inadmissible in any subsequent court-martial.

D. Vacation Not Considered NJP. Vacation of a suspended non-judicial punishment is not itself non-judicial punishment and additional action to impose non-judicial punishment for a violation of a punitive article of the code upon which the vacation action is based is not precluded thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2366 (November 2009).

§425. Mitigation

A. General. Mitigation is a reduction in either the quantity or quality of a punishment. For example, a punishment of \$50.00 forfeiture may be reduced to \$25.00. The general nature of the punishment remains the same. Mitigation is appropriate when:

1. the recipient has, by the recipient's subsequent good conduct, merited a reduction in the severity of punishment.

2. the punishment imposed was disproportionate to the offense or the offender.

B. Judge Advocate Advice. As the rules for mitigation are somewhat complex, Judge Advocate advice is warranted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2366 (November 2009).

§426. Remission

A. This is an action whereby any portion of the unexecuted punishment is canceled. Remission is appropriate under the same circumstances as mitigation. An unsuspended reduction is executed on imposition and thus cannot be remitted, but may be mitigated or set aside. The death, discharge, or separation from the service of the servicemember punished automatically remits any unexecuted punishment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2366 (November 2009).

§427. Setting Aside and Restoration

A. Generally. This is an action whereby the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored. Non-judicial punishment is "wholly set aside" when the commander who imposed the punishment, a successor-in-command, or a superior authority sets aside all punishment imposed upon an individual under Article 15. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a clear injustice. "Clear injustice" means that there exists an unwaived legal or factual error which clearly and affirmatively injured the substantial rights of the servicemember. An example of "clear injustice" would be the discovery of new evidence unquestionably exculpating the servicemember. "Clear injustice" does not include the fact that the servicemember's performance of service has

been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the servicemember.

B. **Proof Required.** Normally, the servicemember's uncorroborated sworn statement will not constitute a basis to support the setting aside of punishment.

C. **Administrative Errors.** In cases where administrative error results in incorrect entries on the Article 15 documents, the appropriate remedy generally is an administrative correction of the form and not a setting aside of the punishment.

D. **Timeliness.** The power to set aside an executed punishment and to mitigate a reduction in grade to a forfeiture of pay, absent unusual circumstances, will be exercised only within four months after the punishment has been executed. When a commander sets aside any portion of the punishment, he will record the basis for this action upon the form. Any punishment set aside after four months from the date punishment has been executed will be accompanied with a detailed addendum of the unusual circumstances warranting such action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2366 (November 2009).

§428. Summarized Article 15

A. **General.** A summarized Article 15 may be imposed by any commander who may impose a formal Article 15. It should be used for only very minor offenses, and where the preliminary inquiry convinces the commander that any punishment that might be imposed should not exceed the following:

1. 14 days extra duty;
2. 14 days restriction;
3. an oral admonition or reprimand;
4. any combination of these punishments.

B. **Procedures.** A servicemember offered a summarized Article 15 may request, but does not have a right, to consult with legal counsel provided by the Government before deciding whether to accept the Article 15, he does not have the right to be accompanied by a spokesperson at the hearing, and he normally must decide whether to accept the Article 15 or demand trial by court-martial within 24 hours. Otherwise, he has the same rights under the summarized procedure that he does under the formal procedure.

C. **Notification and Explanation of Proceedings.** If an imposing commander determines that summarized proceedings are appropriate, the designated subordinate officer or NCO or the commander personally will notify the servicemember of the following:

1. the imposing commander's intent to initiate proceedings under Article 15, LCMJ;
2. the fact that the imposing commander intends to use summarized proceedings and the maximum punishments impossible under these proceedings;
3. the right to remain silent;
4. offense(s) the servicemember has allegedly committed and the Article(s) of the LCMJ violated;
5. the right to demand trial;
6. the right to confront witnesses, examine the evidence, and submit matters in defense, extenuation, and/or mitigation; and

7. the right to appeal.

D. **Hearing.** Unless the servicemember demands trial by court-martial within the decision period, the imposing commander may proceed with the hearing, which should consist of the following:

1. consideration of evidence, written or oral, against the servicemember;
2. examination of available evidence by the servicemember;
3. presentation by the servicemember of testimony of available witnesses or other matters, in defense, extenuation, and/or mitigation;
4. determination of guilt or innocence by the imposing commander;
5. imposition of punishment or termination of the proceedings; and
6. explanation of right to appeal.

E. **Record of Proceedings.** DA Form 2627-1 (Summarized Record of Proceedings under Article 15, UCMJ) will be used to record the proceedings, which may be handwritten. An illustrated example of a completed DA Form 2627-1 is shown at Figure 4-5. Except as provided above, the same rules and limitations concerning punishments, appeal, and clemency are applicable to summarized proceedings as in the case of formal proceedings.

F. **Filing/Destruction of DA Form 2627-1** The Summarized Article 15 form will be maintained locally in the unit's non-judicial punishment files, and shall be destroyed at the end of two years from the date of imposition of punishment or on the servicemember's transfer from the unit, whichever occurs first. A copy will be provided to the servicemember on a request submitted during the filing period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2367 (November 2009).

§429. Distribution and Filing of Article 15 and Allied Documents

A. **General.** DA Form 2627 will be prepared in an original and five copies. All written statements and other documentary evidence considered by the imposing commander or the next superior authority acting on an appeal will be transmitted with the original. Copies of DA Form 2627 will be transmitted through the SIDPERS (J1) to the Military Personnel Records Jacket (MPRJ) to the MilPay maintaining the servicemember's pay account according to DA Pam 600-8, chapter 8. DA Form 268, Report of Suspension of Favorable Personnel Actions, will be submitted per AR 600-8-2 Standard instructions for distribution and filing of forms for commissioned officers, warrant officers, and enlisted servicemembers are set out below.

B. **Original of DA Form 2627**

1. **Place of filing, E-4 and below.** For servicemembers E-4 and below (prior to punishment), the original will be filed locally in unit non-judicial punishment files. Such locally filed originals will be destroyed at the end of 2 years from the date of imposition of punishment or on the servicemember's transfer to another special courts-martial

convening authority, whichever occurs first. For these servicemembers, the imposing commander should annotate item 5 of DA Form 2627 as "Not Applicable (N/A)."

2. Place of filing, E-5 and above. For all other servicemembers E-5 and above, the original will be sent to the appropriate custodian for filing in the OMPF (Official Military Personnel File) located in iPERMS (Personnel Electronic Records Management System.)

3. "Performance Fiche" versus "Restricted Fiche"

a. The "performance fiche" is that portion of the OMPF in iPERMS that is routinely used by career managers and selection boards for the purpose of assignment, promotion, and schooling selection. The "restricted fiche" is that portion of the OMPF in iPERMS that contains information not normally viewed by career managers or selection boards except as provided in AR 640-10 or specified in the Secretary of the Army's written instructions to the section board.

b. A commander's decision whether to file a record of non-judicial punishment on the "performance fiche" of a Servicemember's Official Military Personnel File (OMPF) is as important as the decision relating to the imposition of non-judicial punishment itself. In making a filing determination, the imposing commander must weigh carefully the interests of the servicemember's career against those of the Louisiana National Guard to produce and advance only the most qualified personnel for positions of leadership, trust, and responsibility. In this regard, the imposing commander should consider the servicemember's age, grade, total service (with particular attention to the servicemember's recent performance and past misconduct), and the fact that the filing decision is final, except for those cases where the servicemember has more than one record of non-judicial punishment directed for filing in the "restricted fiche." (See (c) below). However, the interests of the Louisiana National Guard are compelling when the record of non-judicial punishment reflects unmitigated moral turpitude or lack of integrity, patterns of misconduct, or evidence of serious character deficiency or substantial breach of military discipline. In such cases, the record should be filed in the "performance fiche."

c. The decision to file the original DA Form 2627 on the "performance fiche" or the "restricted fiche" in the OMPF in iPERMS will be determined by the imposing commander at the time punishment is imposed. The filing decision of the imposing commander is final subject only to review when a previous DA Form 2627 that has not been wholly set aside is discovered to have been previously filed in the "restricted fiche". Records directed for filing in the "restricted fiche" will be redirected to the "performance fiche" if the servicemember has other records of non-judicial punishment reflecting misconduct in the grade E-5 or higher that have not been wholly set aside recorded in the "restricted fiche."

C. Copy One of DA Form 2627

1. Performance Fiche. For those Article 15's directed for filing on the "performance fiche" of the OMPF, the appropriate custodian must file in iPERMS. Copy one will be filed in the permanent section of the iPERMS unless the original Article 15 is transferred from the "performance fiche" to the "restricted fiche" of the OMPF. In this case,

copy one will be withdrawn from the iPERMS and destroyed.

2. Restricted Fiche. For those Article 15's directed for filing on the "restricted fiche" of the OMPF, this copy will be filed in the unit personnel files and destroyed at the expiration of 2 years from the date of the punishment or on the servicemember's transfer, whichever occurs first. [See also DA Pam 600-8; chap 9, for use and preparation of DA Form 4187, Personnel Action.]

3. Servicemembers E-4 and Below. For servicemembers in grades E-4 and below, copy one will be destroyed. [See also DA Pam 600-8; chap 9, for use and preparation of DA Form 4187, Personnel Action.]

D. Copies Two and Three of DA Form 2627

1. Unsuspended Pay and/or Forfeiture of Pay Sentences. Copies two and three for use as substantiating documents will be forwarded to the MilPay and SIDPERS (J1) that services the MPRJ if the punishment includes an unsuspended reduction and/or forfeiture of pay. If the punishment includes an unsuspended forfeiture of pay, the unit will forward to the MilPay that maintains the servicemember's pay account.

2. Other Punishments. If all punishments affecting pay are suspended by the imposing commander, copies two and three will be retained by the unit where the punishment was imposed and destroyed on expiration of the period of suspension, unless forwarded for supplementary action in accordance with paragraph If the punishment, suspended or unsuspended, does not include reduction or forfeiture of pay, these copies will be destroyed. If a punishment affecting pay is suspended by superior authority acting on an appeal, copy two will be retained by the unit where the punishment was imposed. It will be destroyed when the period of suspension expires unless forwarded for supplementary action in accordance with paragraph if punishment includes only a reduction, copy three will be forwarded to the SIDPERS (J1) servicing the MPRJ. If the punishment includes a reduction and forfeiture or only forfeiture, copy three will be forwarded through the SIDPERS (J1) servicing the MPRJ to the MilPay office maintaining the servicemember's pay account for use as a substantiating document according to AR 37-104-3.

E. Copy Four of DA Form 2626

1. General. Immediately after imposition of punishment, copy four will be annotated in the left-hand corner of the title block sequentially in the order the Article 15 was given during the calendar year; i.e., 91-1, 91-2, etc. On the Reconciliation Log [See paragraph 4-31], and the appropriate information will be entered in it. Thereafter, copy four will be used according to and below.

2. Cases Involving an Appeal

a. On the date punishment is imposed, if item 7 is not completed or blocks b and c are initialed, and item 7 is signed by the servicemember and the punishment includes an unsuspended reduction or unsuspended forfeiture of pay, copy four of DA Form 2627 will be marked "APPEAL PENDING" in the right-hand margin.

b. Copy four will be sent to SIDPERS (J1) and to MilPay. On receipt, the local SIDPERS (J1) and the will check that proper action has been taken on unsuspended reductions and forfeitures of pay.

c. Upon receipt SIDPERS (J1)'s receipt of the copies of DA Form 2627 forwarded by the unit copy four will be returned directly to the imposing commander. Copy four will be destroyed after all periods of suspension of punishment affecting pay have expired.

d. If punishments affecting pay are suspended, copy four will not be transmitted to the SIDPERS (J1) and MilPay. It will be destroyed after all periods of suspended punishments affecting pay have expired.

e. If there are no punishments affecting pay, copy four will not be transmitted to the SIDPERS (J1) and MilPay and will be destroyed after the entry is made in the Reconciliation Log.

3. Cases Not Involving an Appeal

a. Where there is no appeal and the punishment imposed includes an unsuspended reduction or unsuspended forfeiture of pay, copy four will not be marked "APPEAL PENDING." If the punishment imposed includes only an unsuspended reduction, copy four will be forwarded with copies two and three to the SIDPERS (J1).

b. If punishments affecting pay are suspended, copy four will not be transmitted to the SIDPERS (J1) and/or MilPay and will be destroyed after all periods of suspended punishments affecting pay have expired.

c. Copy Five of DA Form 2626. Hand deliver to the servicemember punished.

F. Allied Documents. Allied documents will be transmitted for administrative convenience with the original DA Form 2627 for filing on the restricted fiche of the OMPF [See paragraph 4-34.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2367 (November 2009).

§430. Supplementary Action

A. Supplementary Action. Any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment (except punishment imposed under summarized proceedings, (para 4-28) after action has been taken on an appeal or DA Form 2627 has been distributed according to paragraph 4-29.

B. Recording. Supplementary action will be recorded on DA Form 2627-2, Record of Supplementary Action under Article 15.

C. Distribution and Filing

1. Original. The original will be forwarded to the appropriate custodian of the OMPF as provided in the preceding paragraph. This copy will be filed in the same OMPF fiche location as the DA Form 2627 that initially imposed the punishment. The imposing commander's filing determination on the initial DA Form 2627 will be annotated on the DA Form 2627-2.

2. Copy One. Copy one will be forwarded to the SIDPERS (J1) to be filed in the servicemember's MPRJ when the imposing commander directs filing on the performance fiche of the OMPF. This copy will be destroyed along with copy one of the initial DA Form 2627 if the original DA Form is transferred from the performance to the restricted fiche. In cases of filing on the restricted fiche of the OMPF, copy one will be filed in the unit personnel files.

3. Copies Two and Three. If the action affects a reduction, copy two (and copy two of the initial DA Form 2627, if maintained by the unit) will be forwarded to the SIDPERS (J1). If the action affects a forfeiture copy three will be forwarded to the MilPay which maintains the servicemember's pay account.

4. Copy Four. Copy four will be annotated with the same sequence number as the initial copy four. If the action affects a reduction, it will be forwarded to the SIDPERS (J1) servicing the MPRJ which will annotate it as indicated below. If the action affects forfeiture, it will be forwarded to the MilPay which maintains the servicemember's pay account which will annotate as indicated below. Either the SIDPERS (J1), finance, or both will see that the following is annotated in the left-hand margin and returned to the unit to verify the entry of subsequent actions in the Reconciliation Log.

5. Copy Five. Hand deliver to servicemember punished.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2369 (November 2009).

§431. Reconciliation Log

A. Imposing commanders will ensure that punishments imposed under the provisions of Article 15 are executed. Punishments of reduction and forfeiture of pay may be monitored by the mandatory use of the Reconciliation Log, DA Form 5110-R (Article 15 Reconciliation Log), showing the punishment and date imposed. Reconciliation Log, DA Form 5110-R may be locally reproduced. To properly use DA Form 5110-R, copy four of all DA Forms 2627 must be sequentially numbered and the required data entered in the DA Form 5110-R. These entries are to be compared with copy four of the DA Form 2627 that was returned to the unit by the SIDPERS (J1) and/or MilPay which maintains the servicemember's pay account. Sequential numbers on the DA Form 5110-R will correspond to the number noted on copy four. After information is verified on the DA Form 5110-R from copy four, this copy will be retained until the expiration of any period of suspension of punishments affecting pay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2369 (November 2009).

§432. Time for Distribution of Initial DA Form 2627

A. Distribution will be made IAW paragraph 4-27 after the punished servicemember indicates in item 7 that there will not be an appeal. If the servicemember appeals, the DA Form 2627, minus copy four (if it has been forwarded as an "APPEAL PENDING" copy), will be forwarded to the superior authority and distributed after completion of item 10. Completion of this item shows that the servicemember acknowledges notification of action on the appeal. If item 10 cannot be completed because the servicemember is not reasonably available or due to military exigencies, a statement signed by the imposing commander stating that the punished servicemember was informed in writing of the disposition of the appeal and why it was not possible to have

item 10 completed will be placed in item 11 before distribution is made. When the servicemember appeals the punishment, an "APPEAL PENDING" copy will be distributed as prescribed in paragraph 4-29E. If the servicemember fails to complete or sign item 7, an explanation of the failure will be provided by the imposing commander in item 11 and distribution will be made as prescribed. A servicemember's refusal to declare whether or not he desires to appeal may be presumed to indicate an intention not to appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2369 (November 2009).

§433. Transfer or Removal of Records of Non-judicial Punishment.

A. Except as specifically addressed herein, applicable provisions of active component publications shall govern the transfer or removal of records of non-judicial punishment. [See also, AR 27-10, Chapter 3.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2370 (November 2009).

§434. Use of Non-judicial Punishment Records

A. General. Records of proceedings and supplementary action under Article 15 recorded on DA Forms 2627 and 2627-2, previously or hereafter administered, may be used as directed by competent authority. Allied documentation transmitted with the original or copies of DA Forms 2627 and 2627-2, where filed with any of these forms, shall be considered to be maintained separately for the purpose of determining the admissibility of the original or copies of DA Forms 2627 or 2627-2 at courts-martial or administrative proceedings.

B. Admissibility. A record of non-judicial punishment or a duplicate as defined in M.R.E. 1001, not otherwise inadmissible, is a record of completed actions and may be admitted at courts-martial or administrative proceedings from any file in which it is properly maintained by regulation. A record of non-judicial punishment, otherwise properly filed, will not be inadmissible merely because the wrong copy was maintained in a file. It may be considered for use at courts-martial or administrative proceedings independently of any written statements or other

documentary evidence considered by an imposing commander, a successor, or a superior authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2370 (November 2009).

§435. Effects of Errors

A. Failure to comply with any of the procedural provisions relative to non-judicial punishment shall not invalidate a punishment imposed unless the error materially prejudiced a substantial right of the punished servicemember.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2370 (November 2009).

§436. Announcement of Punishment

A. General. In order to be effective, the military justice system must not only function properly, but it must also appear to function properly. For this reason, the commander will announce the disposition of all cases involving non-judicial punishment of personnel in grade of E-4 and below. The punishment may be announced at the next unit formation after punishment is imposed or, if appealed, after the decision on the appeal. It also may be posted on the unit bulletin board. The purpose of announcing the results of punishments is to preclude perceptions of unfairness of punishment and to deter similar misconduct by other servicemembers. An inconsistent or arbitrary policy should be avoided regarding the announcement of punishment that might result in the appearance of vindictiveness or favoritism.

B. Grades E5 and above. In the cases of personnel in grade E-5 and above, any announcement of Article 15 disposition is discretionary with the commander imposing the punishment. The commander must consider the impact on unit morale and the impairment to job or leadership effectiveness of the individual concerned. In deciding whether to announce punishment of servicemembers in the grade of E5 or above, the following should be considered:

1. the nature of the offense;
2. the individual's military record and duty position;
3. the deterrent effect;
4. the impact on unit morale or mission;
5. the impact on the victim (if any);
6. the impact on the leadership effectiveness of the individual concerned.

C. Article 15 Maximum Punishments Table (Figure 4-1)

Formal¹ Article 15 Maximum Punishments Chart

Commander Imposing Article 15	Upon Servicemember Ranks	Reduction In Rank ²	Fine	Forfeiture of Pay	Admonition or Reprimand	Restriction	Extra Duty	Arrest In Quarters
Company / Detachment Commander (O3 or below)	E-1 to E-4	One Pay Grade	None	\$50	Yes	14 days ³	14 days ³	None
	E-5 to E-7	None	None	\$50	Yes	14 days ³	14 days ³	None
Battalion / Squadron Commander (O4 or O5)	E-1 to E-4	To lowest or any intermediate grade	\$25	\$100	Yes	14 days ³	14 days ³	None
	E-5 to E-6	Not more than one grade ⁶	\$25	\$100	Yes	14 days ³	14 days ³	None
	E-7*	None	\$25	\$100	Yes	14 days ³	14 days ³	None
DRU Commander / SPCMCA (O5 or O6)	E-7 to E-8*	Not more than one grade ⁶	\$25	\$100	Yes	14 days ³	14 days ³	None
	E-9*	None	\$25	\$100	Yes	14 days ³	14 days ³	None
TAG or Designee	E-9*	Not more than one grade ⁶	\$25	\$100	Yes	14 days ³	14 days ³	None
	Officers (Commissioned and Warrant)*	None	\$100	\$100	Yes ⁴	15 days ⁵	None	15 days ⁵

Notes:

Summarized Article 15s carry maximum authorized punishments not exceeding any combination of: 14 days extra duties; restriction; oral admonition or reprimand.

Commanders may only demote from a grade within the commanders' promotion authority. Enlisted members above E-4 may not be reduced more than one grade.

Restrictions and extra duties must be performed while Servicemember is on duty status. They may be combined to run concurrently, but the combination may not exceed the maximum imposable for extra duty.

Admonitions and/or reprimands given to officers as NJP must be administered in writing.

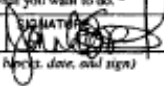
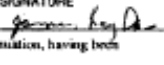
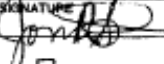
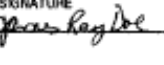
Arrest in quarters may not be imposed in combination with restriction for officers.

Only TAG can reduce an E-9. Only TAG or an O6 DRU CDR (with TAG release of disposition) can reduce an E-7 or E-8. Only TAG, a DRU CDR, or an O5 BN CDR can reduce an E-5 or an E-6.

* TAG retains the authority to dispose of any and all allegations of misconduct involving officers and senior non-commissioned officers in the rank of E-7 and above. Subordinate commanders must transmit the allegations along with their recommendations through their servicing Judge Advocate to JFHQ-LA-SJA for review by TAG.

D. Reserved For Future Publication (Figure 4-2)

E. Formal Article 15 (Figure 4-3)

RECORD OF PROCEEDINGS UNDER ARTICLE 15, LCMJ				
For use of this form, see AR 27-10; the proponent agency is TJAG				
See Notes on Reverse Before Completing Form				
NAME Doe, James Ray	GRADE E-4	SSN 123-45-6789	UNIT Det 1, 1021st Eng Co Vert, 55420 N. Railroad Ave, Independence, LA	PAY (Basic & Sea/Foreign) \$ 186.06
1. I am considering whether you should be punished under Article 15, LCMJ, for the following misconduct: ¹				
In that you, did, on or about 0800 hours until 1600 hours on 14 June 2008, without authority, absent yourself from your unit during drill, to wit: Det 1, 1021st Engineer Company Vertical, located at 55420 N. Railroad Ave, Independence, La 70443. This is in violation of Article 86, LCMJ.				
2. You are not required to make any statements, but if you do, they may be used against you in this proceeding or at a trial by court-martial. You have several rights under this Article 15 proceeding. First I want you to understand I have not yet made a decision whether or not you will be punished. I will not impose any punishment unless I am convinced beyond a reasonable doubt that you committed the offense(s). You may voluntarily have an open hearing before me. You may request a person to speak on your behalf. You may present witnesses or other evidence to show why you shouldn't be punished or all (matters of defense) or why punishment should be very light (matters of extenuation and mitigation). I will consider everything you present before deciding whether I will impose punishment or the type and amount of punishment I will impose. ² If you do not want me to dispose of this report of misconduct under Article 15, you have the right to demand trial by court-martial instead. ³ In deciding what you want to do you have the right to consult with legal counsel located at <u>Trial Defense Services at 225-7319-4650</u> . You now have 48 hours to decide what you want to do. ⁴				
DATE 9 July 2008	NAME, GRADE, AND ORGANIZATION OF COMMANDER JOHN A. SMITH, O2, 1021st Engineer Company		SIGNATURE 	
3. Having been afforded the opportunity to consult with counsel, my decisions are as follows: (Initial appropriate boxes, date, and sign)				
a. <input checked="" type="checkbox"/> I demand trial by court-martial.				
b. <input checked="" type="checkbox"/> I do not demand trial by court-martial and in the Article 15 proceedings:				
(1) I request the hearing be <input checked="" type="checkbox"/> Open <input type="checkbox"/> Closed. (2) A person to speak in my behalf <input type="checkbox"/> is <input checked="" type="checkbox"/> is not requested.				
(3) Matters in defense, mitigation, and/or extenuation <input checked="" type="checkbox"/> Are not presented <input type="checkbox"/> Will be presented to person <input type="checkbox"/> Are attached.				
DATE 10 July 2008	NAME AND GRADE OF SERVICE MEMBER JAMES RAY DOE, E4		SIGNATURE 	
4. In an <input type="checkbox"/> Open <input type="checkbox"/> Closed hearing ⁵ all matters presented in defense, mitigation, and/or extenuation, having been considered, the following punishment is imposed: ⁶				
To be reduced to Private First Class (E3).				
5. I direct the original DA Form 2627 be filed in the <input type="checkbox"/> Performance file <input type="checkbox"/> Restricted file or the OMPF. ⁷ N/A				
6. You are advised of your right to appeal to the <u>Cdr 205th EN BN</u> within 5 calendar days. An appeal made after that time may be rejected as untimely. Punishment is effective immediately unless otherwise stated above.				
DATE 10 July 2008	NAME, GRADE, AND ORGANIZATION OF COMMANDER JOHN A. SMITH, O2, 1021st Engineer Company		SIGNATURE 	
7. (Initial appropriate box, date, and sign)				
a. <input checked="" type="checkbox"/> do not appeal b. <input type="checkbox"/> I appeal and do not submit additional matters ⁸ c. <input type="checkbox"/> I appeal and submit additional matters ⁸				
DATE 10 July 2008	NAME AND GRADE OF SERVICE MEMBER JAMES RAY DOE, E-3		SIGNATURE 	
8. I have considered the appeal and it is my opinion that:				
DATE	NAME AND GRADE OF JUDGE ADVOCATE		SIGNATURE	
9. After consideration of all matters presented on appeal, the appeal is:				
<input type="checkbox"/> Denied <input type="checkbox"/> Granted as follows: ⁹				
DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER		SIGNATURE	
DATE	SIGNATURE OF SERVICE MEMBER			
10. I have seen the action taken on my appeal.				
11. ALLIED DOCUMENTS AND/OR COMMENTS ¹⁰ ¹¹ ¹²				

DA FORM 2627, AUG 84

EDITION OF NOV 82 IS OBSOLETE

ORIGINAL

USAPPC V1.00

F. Record of Supplementary Action under Article 15 with continuation page (Figure 4-4)

RECORD OF SUPPLEMENTARY ACTION UNDER ARTICLE 15, UCMJ For use of this form, see AR 27-10; the proponent agency is The Judge Advocate General.		
NAME AND GRADE BUZZWORTHY, LISA B., E4	SSN 444-11-3265	UNIT HHC, 754 th AVN BN, Fort Atterbury, IN 46124-9000
TYPE OF SUPPLEMENTARY ACTION (OTHER THAN BY SUPERIOR AUTHORITY ACTING ON APPEAL) (Check appropriate box) <input type="checkbox"/> SUSPENSION (Complete item 1 below) <input type="checkbox"/> MITIGATION (Complete item 2 below) <input type="checkbox"/> REMISSION (Complete item 3 below) <input type="checkbox"/> SETTING ASIDE (Complete Item 4 below) <input checked="" type="checkbox"/> VACATION OF SUSPENSION (Complete item 5 below)		
1. SUSPENSION The punishment(s) of _____ _____ imposed on the above service member on _____ (is) (are) suspended and will automatically be remitted if not vacated before _____ (date of punishment) (date)		
2. MITIGATION The punishment(s) of _____ _____ imposed on the above service member on _____ (is)(are) mitigated to _____ _____ (date of punishment)		
3. REMISSION The punishment(s) of _____ _____ imposed on the above service member on _____ (is) (are) remitted. _____ (date of punishment)		
4. SETTING ASIDE The punishment(s) of _____ _____ imposed on the above service member on _____ (is) (are) set aside on the basis that _____ _____ (date of punishment)		
All rights, privileges, and property affected are hereby restored.		
5. VACATION OF SUSPENSION a. The suspension of the punishment(s) of <u>reduction to PV1 (E1)</u> _____ imposed on the above service member on <u>8 Oct 04</u> (is) (are) hereby vacated. The unexecuted portion(s) of the punishment(s) will be duly executed. _____ (date of punishment)		
b. Vacation is based on the following offense(s): <u>In that you did, at Fort Atterbury, IN, on or about 14 Oct 04, behave yourself with disrespect toward CPT Marvin Manning, your superior commissioned officer, then known by you to be your superior commissioned officer, by saying to him "go sit on an improvised explosive device" or words to that effect. This is a violation of Article 89, UCMJ. (see continuation sheet)</u> _____		
c. The member (was) (was not) given an opportunity to rebut (para 3-25, AR 27-10).		
d. The member (was) (was not) present at the vacation proceeding (para 3-25, AR 27-10).		
ORIGINAL DA FORM 2627 (Check appropriate box) <input checked="" type="checkbox"/> DIRECTED FOR FILING ON THE <input type="checkbox"/> PERFORMANCE <input type="checkbox"/> RESTRICTED FICHE OF THE OMPF. N/A		
AUTHENTICATION (Check appropriate boxes) <input checked="" type="checkbox"/> BY MY ORDER: <input checked="" type="checkbox"/> THE OFFICER WHO IMPOSED THE PUNISHMENT <input type="checkbox"/> THE SUCCESSOR IN COMMAND TO THE IMPOSING COMMANDER <input type="checkbox"/> AS SUPERIOR AUTHORITY		
DATE 15 Oct 04	NAME, GRADE, AND ORGANIZATION OF COMMANDER JULIE WOOD, LTC, HQs, 754 th AVN BN	SIGNATURE _____

DA FORM 2627-2

DA Form 2627-2, BUZZWORTHY, Lisa B., 444-11-3265, HHC, 75th AVN BN, Fort Atterbury, IN 46124-9000

Item 5b, continued:

In that you, did, at Fort Atterbury, Indiana, on or about 14 Oct 04, behave yourself with disrespect toward CPT Marvin Manning, your superior commissioned officer, then known by you to be your superior commissioned officer, by contemptuously raising your hand in front of his face and then turning your back and walking away. This is a violation of Article 89, UCMJ.

G. Summarized Article 15 (Figure 4-5)

SUMMARIZED RECORD OF PROCEEDINGS UNDER ARTICLE 15, XXXX LCMJ			
For use of this form, see AR 27-10; the proponent agency is TJAG.			
See Notes on Reverse Before Completing Form			
This form will be used only in cases involving enlisted personnel and then ONLY when no punishment OTHER THAN oral admonition or reprimand, restriction for 14 days or less, extra duties for 14 days or less, or a combination thereof has been imposed.			
NAME	GRADE	SSN	UNIT
John A. Jones	Pfc	012-34-5678	A Co., 769 Engr Bn, 204th ASG
1. On <u>18 JULY 1992</u> , the above service member was advised that I was considering imposition of nonjudicial punishment under the provisions of Article 15, UCMJ, Summarized Proceedings, for the following misconduct:			
<p><i>On or about 19 July, without authority, you failed to go at the prescribed time, to your appointed place, to wit: A Co 769th Engr Bn, motor stables at Bldg 1000, Camp Beauregard, La., in violation of article 86, LCMJ.</i></p>			
2. The member was advised that no statement was required, but that any statement made could be used against him or her in the proceeding or in a court-martial. The member was also informed of the right to demand trial by court-martial, the right to present matters in defense, extenuation and/or mitigation, that any matters presented would be considered by me before deciding whether to impose punishment, the type or amount of punishment, if imposed, and that no punishment would be imposed unless I was convinced beyond a reasonable doubt that the service member committed the misconduct. The service member was afforded the opportunity to take 24 hours to make a decision regarding these rights. No demand for trial by court-martial was made. After considering all matters presented, the following punishment was imposed:			
<p><i>Oral reprimand and 4 days extra duties while at A.T.</i></p>			
3. The member was advised of the right to appeal to the <u>Cdr, 769th Engr Bn</u> within 5 calendar days, that an appeal made after that time could be rejected as untimely, and that the punishment was effective immediately unless otherwise stated above. The member:			
<input checked="" type="checkbox"/> Elected immediately not to appeal <input type="checkbox"/> Requested time to decide whether to appeal and the decision is indicated in item 4, below.			
DATE	NAME, GRADE, AND ORGANIZATION OF IMPOSING COMMANDER		SIGNATURE
19 Jul 92	James L. Mitchell, CPT, A Co 769th Engr Bn.		<i>James L. Mitchell</i>
4. (Initial appropriate block, date, and sign)			
a. <input checked="" type="checkbox"/> I do not appeal b. <input type="checkbox"/> I appeal and do not submit matters for consideration c. <input type="checkbox"/> I appeal and submit additional matters			
DATE	NAME AND GRADE OF SERVICE MEMBER		SIGNATURE
5. After consideration of all matters presented in appeal, the appeal is:			
<input type="checkbox"/> Denied <input type="checkbox"/> Granted as follows:			
DATE	NAME, GRADE, AND ORGANIZATION OF COMMANDER		SIGNATURE
6. I have seen the action taken on my appeal.		DATE	SIGNATURE OF SERVICE MEMBER
7. ALLIED DOCUMENTS AND/OR COMMENTS			

DA FORM 2627-1
AUG 84

EDITION OF NOV 82 IS OBSOLETE

H. Judge Advocate Review of Article 15 (Figure 4-6)

LANG-XXX
DATE

MEMORANDUM FOR [Commander]

SUBJECT: Legal Sufficiency Review of Article 15, SGT JOHN DOE, XXX-XX-XXXX

ISSUE: Presented for decision is appeal of Article 15 administered to above named individual.

BACKGROUND AND DISCUSSION:

- a. On 10 July 2006, LTC HARD CHARGER imposed Article 15 punishment on SGT JOHN DOE. Punishment imposed was reduction two (2) pay grades, fine of \$25.00, and 2 days extra duties, to be performed during upcoming AT.
- b. SGT DOE is appealing the Article 15 and has submitted additional matters. He is specifically contesting the amount of the extra duties.

RECOMMENDATION: Review of the attached evidence indicates that the punishment is within the range of appropriateness and the proceedings were properly conducted under the current law and regulations. It should be noted that extra duties, to be lawful, must be performed while Servicemember is on duty status. Accordingly, I recommend denial of the appeal.

[SIGNATURE BLOCK]

I. Request to Superior to Exercise Article 15 Jurisdiction (Figure 4-7)

LANG-XXX
DATE

MEMORANDUM FOR CDR, [Appropriate Command Level Unit]

SUBJECT: Request for Action UP LCMJ Article 15

The enclosed report indicates that on or about 5 May 1992 at North Fort Polk, LA, SGT John Q. Public, 123-45-6789, a member of this unit, was absent without leave. This act is punishable under LCMJ Article

I recommend you exercise your non-judicial punishment authority in the disposition of this case.

[SIGNATURE BLOCK]

NOTES: No recommendation may be made as to the kind or amount of punishment to be imposed this memorandum form may be used in lieu of DA Form 5109-K See paragraph 4-5(d).

J. Sample Endorsements for Remission. Mitigation. Suspension or Setting Aside of NJP (Figure 4-8)

LANG-XXX
DATE

MEMORANDUM FOR

On ____, 19__, (I) (my predecessor in command) (the Commander, ____) imposed non-judicial punishment on you, consisting of _____. (No part of the punishment) The time punishment) that portion of the punishment relating to ____) was suspended. (You have requested action be taken to remit [the punishment] [the unserved portion of the punishment] [that portion of the punishment relating to 1).

I hereby remit (the punishment) (the unserved portion of the punishment) (the portion of the punishment relating to ____) effective (immediately) 19J.

OR

I hereby mitigate (the punishment) (so much of the punishment as relates to portion of the punishment relating to _____) to _____.) (the unserved portion of the punishment)

OR

I hereby suspend (the punishment) (the unserved portion of the punishment) (the portion of the punishment relating to _____) until _____, 19____, at which time, unless the suspension is sooner vacated, it will be remitted.

OR

2. I hereby set aside (the punishment) (the unserved portion of the punishment) (the unserved portion of the punishment relating to _____). All rights, privileges, and property of which you have been deprived by (that portion of) the sentence set aside will be restored.

NOTE: If the action taken results in eliminating or suspending a reduction which was previously in effect, a paragraph in substantially the following form should be added

Your date of rank as (Private First Class) is _____

[SIGNATURE BLOCK]

K. Sample Endorsement for Revocation of Suspension of NJP (Figure 4-9)

LANG-XXX
DATE

MEMORANDUM FOR

On _____, 19____, (I) (my predecessor in command) (the Commander, imposed non-judicial punishment on you, consisting of _____. The portion of the punishment relating to _____ was suspended.

I hereby revoke the suspension of that portion of the punishment relating to _____, effective (immediately).

You are expected to _____ [here set out any special and necessary instructions as to how you expect the member to carry out the punishment ordered into effect.]

[SIGNATURE BLOCK]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2370 (November 2009).

Chapter 5. Pretrial Procedures

§501. Report of Offense

A. There are a number of ways a commander can become aware of a criminal act committed by a servicemember, including personal observation, receipt of a report or complaint from an individual within or without the command, or receipt of a formal report from a law enforcement agency, including the military police or Criminal Investigation Command. This information may be incomplete and may require further investigation. Chapter 3 deals with the subject of Investigating and Obtaining

Evidence. Any person may report an offense that is a violation of law. Ordinarily, any military authority who receives a report of an offense shall forward as soon as practicable the report and any accompanying information to the immediate commander of the suspect. However, competent authority superior to that commander may direct otherwise. [R.C.M.301(b).]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2376 (November 2009).

§502. Commander's Duties before Trial

A. General. Upon receiving a DD Form 458, Charge Sheet with its allied papers, a commander with authority to convene courts-martial must examine the file and decide

which of the options available he will exercise. If he should decide to refer the case to trial, he incurs certain additional duties. While a commander must have a good understanding of the military justice system and his role in that system, he must never hesitate to consult with the SJA or trial counsel if any questions arise concerning the proper disposition of a case.

B. Insure there is a Case. One of the most frustrating experiences a commander can face is to charge an individual and send him to trial only to have the Military Judge or First Circuit Court of Appeal, or other appellate court, dismiss the case for failure of the specification to state an offense. Part IV of the Manual for Courts-Martial, United States, shall be consulted for discussions and descriptions of the crimes which constitute offenses under the LCMJ. The MCM also includes a discussion of the proof which is required to sustain a conviction for each offense. The "elements of the offense" are those facts which must be proved beyond a reasonable doubt in order to sustain a conviction. The adequacy of the specification should always be checked by the trial counsel before the case is referred to trial. In the event an offense is not alleged, the convening authority should return the DD Form 458, Charge Sheet to the accuser for correction. In the event such action is necessary, it should be expedited to insure that the accused is not denied his right to a speedy trial.

C. Insure the Evidence Supports the Allegations. It is also essential to insure that there is sufficient competent evidence to support the allegations in the charges. In processing charges, it is not necessary for a commander to await the results of a Criminal Investigation Division (CID) Laboratory analysis before he forwards the DD Form 458, Charge Sheet. If a servicemember has been found with marijuana in his possession and the company commander desires to charge him with a violation of Article 112a, LCMJ, he may begin processing the DD Form 458, Charge Sheet and send it forward even though the lab analysis has not been completed.

D. Consider the Individual Servicemember. In addition, the commander and the convening authority must inquire into the background of the individual offender before he can make an intelligent decision as how to dispose of the charges. There may be factors in the servicemember's background or adjustment to his unit which, in part, caused or contributed to commission of the offense. Such factors should be considered by the convening authority.

E. Disposition of Charges. There are several options available to the commander when processing military justice actions among the options are:

1. Dismissal. A commander may dismiss charges that have been preferred. A decision to dismiss a charge does not bar other disposition of the offense, such as administrative action or Article 15 punishment by the same commander, or preferral or repreferral of a charge by the same or a superior commander. Charges are ordinarily dismissed by lining out and initialing the deleted specification. When all charges and specifications are dismissed, the accused and the accuser should ordinarily be informed. A charge should be dismissed when it fails to state an offense, when it is unsupported by available evidence, or when there are other sound reasons why trial by court-martial is not appropriate on the charge. If an accused has already refused Article 15 punishment, but

later requests that the Article 15 be reoffered, charges are usually dismissed after Article 15 punishment is imposed.

2. Returning Charges to Subordinate Authority. Instead of dismissing charges or taking other action, a commander may return the charges to a subordinate commander for whatever action the subordinate deems appropriate. This might occur if the commander did not think the offense was as serious as did the subordinate commander. When returning charges to a subordinate commander, the superior commander may not normally direct that the subordinate dispose of the charges in any particular way. Normally the superior commander should only indicate that the subordinate commander dispose of the charges by a means within the subordinate's authority. Otherwise, an issue of "unlawful command influence" may result.

3. Referring Charges to Trial. When an accused's prior record, the seriousness of the offense, and the needs for justice and discipline indicate that a trial by court-martial is warranted, the convening authority may dispose of the charge by referring it for trial by court-martial. The referral of a case to trial is accomplished by completing part V of the DD Form 458, Charge Sheet, authenticated by the signature of an adjutant under the command line of the convening authority. Factors to consider in this analysis include:

- a. the charges should be referred to the lowest court which can adjudge an appropriate punishment [See Figure 4-1 for Table of Maximum Punishments];

- b. consistent with the needs of discipline and justice, there should be relative uniformity (or proportionality) in the treatment of military justice violations;

- c. a commander should also analyze the type of offense before him, and determine whether the offense is one where there is an identifiable victim involved (e.g. larceny), or whether it is a crime where no identifiable victim is involved (e.g. AWOL). In conjunction with this, he should look to see what injury or threat, if any, was inflicted upon the victim and, if so, whether the offender has made meaningful steps toward restitution;

- d. an inquiry should be made to determine what evidence, if any, there is of premeditation, reflection, conspiracy, and the relative culpability among multiple offenders;

- e. in deciding upon his action or recommendation, a commander should take into account the character and age of the accused as well as his previous military and civilian history. The offender's prior military and civilian record is, of course, only one factor among many that must be considered by a commander;

- f. additionally, an offender's mental state should be considered along with any problems the servicemember may have. The convening authority should also consider any signs the individual has shown toward rehabilitation. If the individual has performed well since the commission of the offense and there seems to be rehabilitation potential present, then perhaps a referral to a lower level court-martial might be appropriate;

- g. the recommendations of subordinates should be given their due weight since they are closest to the situation and most likely know the facts and probable repercussions of a military justice violation within the unit. Such reliance

should be tempered by caution, however, in that the subordinate is also plagued with having the troublemaker in his unit

h. the previous disposition of similar offenses within the same command should also be considered, the administration of military justice should be even-handed in order to appear fair. If one servicemember is given an Article 15 for an offense and another servicemember is given a SPCM for the same offense under identical circumstances, the servicemembers may perceive the system as unfair. Still, each case must be evaluated individually, and there will often be factors that point toward the need for different treatment of servicemembers guilty of substantially similar wrongdoing.

i. Forwarding Charges to Superior Authority. The commander may feel that his power is inadequate to handle the case. If that is the case, then he must forward the file to a superior authority who's judicial or non-judicial powers are greater than his. For example, if a SCM convening authority believes that a punitive discharge is appropriate, he will have to forward the file through channels to the SPCMCA, the next highest authority who can convene a SPCM, the lowest court capable of adjudging a punitive discharge. [See Figure 5-1, Transmittal of Court-Martial Charges.]

4. Judge Advocate Advice. No charges shall be referred to a SPCM or GCM before the convening authority has consulted directly with the appropriate judge advocate or his representative for advice with regard to the investigation, disposition of the case, and guidance in procedural matters. [See Figure 5-2 for example of Judge Advocate Pretrial Advice.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2376 (November 2009).

§503. Referral of Offenses to Civilian Authorities

A. Evaluation of the Offense. Upon receipt of information that a servicemember of the command is suspected of committing an offense, the immediate Commander must make or cause to be made a preliminary inquiry into the suspected offense(s). [R.C.M. 303.] Upon determining that an offense has been committed, one of the issues that the Commander must decide is whether the conduct constituting the offense is characterized as a "felony," a "misdemeanor," a "dual" offense, a "purely civilian offense", or a "purely military offense." These terms are defined below and/or in the GLOSSARY to this Regulation. Commanders should consult with the servicing Staff Judge Advocate if in doubt on this evaluation.

B. "Dual" Offenses.

1. General. This would involve conduct that violates both civilian and military laws. Examples would include assault, battery, theft, drunk driving, riot, damage to property, disturbing the peace, and larceny.

2. Felonies. If the "dual" offense is a felony under the laws of Louisiana, federal law, or laws of another state where the incident occurred, [See GLOSSARY for definition] the commander must, at the earliest opportunity, consult with the Office of the Staff Judge Advocate regarding the advisability of referral to the proper civilian

authorities in the Parish (or County) where the offense occurred. Many of the offenses defined as felonies under Louisiana law that are prohibited under the UCMJ are omitted from the LCMJ (e.g. Article 118 under the UCMJ defines and prohibits murder; this is omitted in the LCMJ, though homicide is defined and prohibited under general Louisiana laws applicable to all persons within the State. [See R.S. 14:29 et seq.] In the absence of extraordinary circumstances, each such case should be promptly referred to the appropriate civilian agency. When civilian felony charges have been filed against a servicemember, he shall be surrendered to civilian authorities.

3. Misdemeanors. If an offense against both civilian and military law is determined to involve a misdemeanor, [See GLOSSARY for definition] the commander should exercise discretion over his option of referring the matter to appropriate civil authorities or retaining the matter for disposition pursuant to courts-martial, non-judicial punishment, or non-punitive disciplinary sanctions. If circumstances permit, SJA advice should be sought.

C. Purely "Civilian" Offenses. Criminal conduct over which the LANG has no jurisdiction falls into this category. An example may be a crime committed in a non-duty status, not on a military facility, and when the victim has no service connection. Neither courts-martial nor commanders exercising non-judicial punishment shall have jurisdiction over purely civilian offenses, however a civilian conviction may afford basis for administrative action.

D. Purely "Military" Offenses. This is conduct that has no counterpart in the civilian law. Examples of purely military offenses are absence without leave (AWOL), missing movement, and disrespect to a superior commissioned officer. The commander's evaluation over how to deal with such offenses is not restricted by considerations of referral to civilian prospective agencies.

E. Policy. When the offense is punishable under the LCMJ and the State Criminal Code, the matter should ordinarily be referred to civilian authorities for disposition unless the interests of the Louisiana National Guard are better served by utilization of military administrative, non-judicial, or courts-martial procedures. Trial and punishment by civil authorities does not preclude trial and additional punishment by court-martial for any purely military offense related to a servicemember's commission of a referred offense, however caution and Judge Advocate advice should be obtained in such circumstances. A commander may re-evaluate any decision on referral should the appropriate civil authorities decline prosecution or fail to demonstrate an intention to timely initiate appropriate actions toward prosecution and/or punishment. [See LCMJ Article 14.]

F. Report to Superior Commander. If a case is referred to appropriate civilian authorities, the commander shall make an immediate report through operational channels to TAG. When the determination is made to precede within the LANG Military Justice system, the commander should complete the investigation (Chapter 3) in a timely manner to determine if there is probable cause that the accused committed the offense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2378 (November 2009).

§504. Arrest Warrant Procedures

A. Definitions

Apprehension—the taking of a person into custody. [LCMJ Article 7(A)]

Detention—the imposition of custody by competent authority, pending disposition of offenses for a period of longer than 8 hours. For purposes of this Regulation, the term “detention” shall be synonymous with “arrest” and “arrest warrant” under LCMJ Articles 8 and 9.

B. Grounds for Apprehension and Detention—a person subject to the LCMJ may be apprehended and detained only for an offense triable by court-martial upon probable cause to apprehend and when a properly executed arrest warrant is issued. Probable cause to apprehend exists when there are reasonable grounds to believe that an offense under the LCMJ has been or is being committed and the person to be apprehended committed or is committing the offense. Receipt of the sworn Charge Sheet (DD Form 458) is considered probable cause for the issuance of an arrest warrant.

C. Apprehension by Military Authorities. If probable cause exists to apprehend a servicemember who is located on property under control of the Louisiana National Guard, then persons authorized under LCMJ Articles 7 and 8 may apprehend persons for which, while in a duty status, there is probable cause to believe that an offense has been committed and those who take part in quarrels, frays, or disorders. An arrest warrant shall not be necessary to apprehend servicemembers located on military property or installations.

D. Apprehension by Civilian Law Enforcement

1. Apprehension of all servicemembers who are located outside of military installations or military property shall be conducted under the arrest warrant procedures under LCMJ Article 8 in accordance with this Regulation. Any apprehension conducted outside of military installations and property shall be conducted by civilian law enforcement agencies which have jurisdiction over the location where the accused may be found. In order to make an apprehension, a law enforcement officer may use such physical force as in reasonably justifiable and authorized for the officer to exercise under the laws of this state.

2. Upon making the apprehension, the officer shall take the offender without due delay before the officer directing the apprehension in the arrest warrant. If circumstances require that the accused must be detained prior to being taken to the apprehension authority, he may be placed in a confinement facility, but for no more than 8 hours and he may not be placed in the general population of such facility.

3. If circumstances are such that it is clear that the accused will not be released to his commander within 8 hours of apprehension, then the accused shall be released and given a written order to appear before the court martial on a certain time and date. The order shall provide a warning to the accused that failure to appear will result in another arrest warrant being issued and additional charges brought against him under the LCMJ.

4. Overnight detention or pre-trial confinement is not authorized and, in such circumstance, the arresting authority

will release the accused to his unit as expeditiously as possible. Overnight pre-trial confinement pursuant to an arrest warrant shall not be authorized unless approved by the State Judge Advocate.

E. Arrest Warrant Procedure. Arrest warrants may be initiated by the SCMCA (i.e. the Battalion Commander) when, based upon his/her judgment and discretion, all other methods have failed to secure the presence of the accused for trial by court martial.

1. Before an arrest warrant will be approved, the unit must certify that all reasonable efforts to secure the presence of the accused have been exhausted and arrest is the last available means to secure the presence of the accused. Reasonable efforts include, but are not limited to telephone contact, personal contact, AWOL Recovery Team efforts and the like. All specific details of these attempts to contact the accused should be fully set forth in the DA Form 3744 (Affidavit Supporting Request for Authority to Search and Seize or Apprehend). All reasons given by the accused should be listed in the Affidavit, along with the details of the actions taken by the unit to address the accused’s concerns.

2. AWOL Recovery Teams. AWOL Recovery Teams usually consist of two or more soldiers who travel to the home of a servicemember who is Absent Without Leave from a required drill or other assembly and attempt to convince the servicemember to voluntarily attend the required assembly. AWOL Recovery Teams are not authorized to involuntarily take the servicemember from his or her home to the assembly. Members of an AWOL Recovery team should include responsible and mature non-commissioned officers or officers. An AWOL Recovery Team which involuntarily secures a servicemember’s presence at drill or other assembly violates this Regulation and may expose themselves to civil litigation pursuant to 28 U.S.C. 1983. If the servicemember refuses to return to drill or other assembly, the AWOL Recovery Team will leave, return to the armory. The unit then may request a warrant for the arrest of the AWOL servicemember. The DA Form 3744 (Affidavit Supporting Request for Authority to Search and Seize or Apprehend) and warrant application will describe the actions of the AWOL Recovery Team and the information learned by their activity.

3. Even after the warrant request is initiated, the unit shall continue to make calls and visits, and send letters to try to recover the servicemember if the Battalion Commander has not otherwise excused the servicemember from service.

4. A warrant for arrest must be completed in its entirety to include a copy of the completed charge sheet with required signatures for referral of the charges to a court-martial. A request for an Arrest Warrant [See Appendix G for Arrest Warrant Requirements] must include the following items:

- a. warrant checklist;
- b. request for warrant signed or endorsed by the battalion commander. In the request, give a summary of the servicemember’s overall performance and answer the following questions.
 - i. Has the accused been deployed to Operation Iraqi Freedom or Operation Enduring Freedom?
 - ii. Has the accused experienced any extenuating circumstances or hardship recently or since the unsatisfactory participation?

iii. What specific actions has the unit taken to secure the presence of the accused including a description of all personal contact by the members of the unit?

iv. A characterization of the accused service.

c. DD Form 458, Charge Sheet

d. Arrest Warrant

e. Written Order to Report

f. DA Form 3744, Affidavit Supporting Request for Authority to Search and Seize or Apprehend. Include all elements of "who, what, where, when and why".

g. DRU Judge Advocate Legal Review and Recommendation

5. All arrest warrants shall be approved by the Adjutant General prior to execution. The Adjutant General, in writing, may delegate approval authority for arrest warrants. In order to secure approval, all requests for arrest warrants shall be:

a. sent through the Battalion Commander for recommendation and guidance;

b. sent to the DRU Judge Advocate for legal review. The DRU Judge Advocate or Paralegal will send to the State Judge Advocate for legal review and TAG decision;

c. the Arrest and confinement of any soldier shall be reported by the chain of command directly to the Adjutant General.

6. Written Authorization. A written arrest warrant [Figure 5-3] shall be executed by the authority ordering apprehension and/or detention. The warrant shall:

a. specify the name of the person to be apprehended;

b. specify the nature of the LCMJ offense violated;

c. state the date when issued;

d. state that it is in the name of the governor, be signed and bear the title of the person having authority to issue the order;

e. command any civilian law enforcement officer to arrest the person for whom the order was issued and to bring the person before the commanding officer issuing the order or superior authority (whose address and phone number shall be identified), or deliver the person apprehended to a civil jail to be held for delivery to military authorities;

f. state an amount of bail that may be posted by the soldier to secure his release, which shall not exceed:

i. Summary Court-Martial - \$500.00;

ii. Special Court-Martial - \$1,000.00;

iii. General Court-Martial - \$2,500.00.

F. Use of Force. Any person authorized to make an apprehension is justified in using only such nondeadly force that such person reasonably believes is necessary to defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while making or attempting to make an arrest or while preventing or attempting to prevent an escape. Use of deadly force is prohibited except when a person authorized to apprehend reasonably believes such force is necessary for self-defense or for the defense of another person for the use or imminent use of deadly physical force by the person apprehended or to be apprehended.

G. Report of Apprehension. Any person who apprehends an alleged offender shall immediately cause a report to the offender's commander or superior authority, providing the commander or superior authority with the name of the

prisoner, the time and place of confinement, if any, and the name of the person who ordered or authorized the apprehension. A similar report shall be made to the staff judge advocate serving the organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2379 (November 2009).

§505. Apprehension and Detention by Peace Officers

A. Authority to Apprehend. Any peace officer having authority to apprehend offenders under the laws of the state may apprehend and detain an offender under the LCMJ.

B. Apprehension Procedures. A peace officer may apprehend and detain a person subject to the LCMJ:

1. for any court-martial offense committed in the presence of the peace officer, if the peace officer has probable cause to believe the person apprehended committed it, or

2. when the peace officer is notified by telegraph, telephone, radio, facsimile machine, or other mode of communication by a commissioned officer or by military law enforcement officials, or by another peace officer, that there exists a duly issued order for the apprehension of the person by a commanding officer to whose authority the person is subject, or by a military court.

C. Notice to Servicemember. The peace officer shall inform the person to be apprehended of the peace officer's authority and reason for the apprehension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2380 (November 2009).

§506. Pretrial Restraint

A. General. Pretrial restraint is moral or physical restraint on a Servicemember's liberty which may be imposed before and during disposition of offenses. Pretrial restraint may consist of conditions on liberty, restriction in lieu of arrest, arrest, or confinement.

B. Conditions on Liberty. Conditions on liberty are imposed by orders directing a person to do or refrain from doing specified acts. Such conditions may be imposed in conjunction with other forms of restraint or separately.

C. Restriction in Lieu of Arrest. Restriction in lieu of arrest is the restraint of a person by oral or written orders directing the person to remain within specified limits; a restricted person shall, unless otherwise directed, perform full military duties while restricted.

D. Arrest. Arrest is the restraint of a person by oral or written order not imposed as punishment, directing the person to remain within specified limits; a person in the status of arrest may not be required to perform military duties such as commanding or supervising personnel, serving as guard, or bearing arms. The status of arrest automatically ends when the Servicemember is placed, by the authority of the person who ordered the arrest or a superior authority, on duty inconsistent with the status of arrest. Arrest shall not prevent requiring the Servicemember arrested to do ordinary cleaning policing, or to take part in routine training and duties.

E. Confinement. Pretrial confinement is physical restraint, imposed by order of competent authority, depriving

a person of freedom pending disposition of offenses for a period of longer than 24 hours. This should be distinguished from detention, discussed in Paragraphs 5-4. Pretrial confinement will not be used except in accordance with Paragraphs 5-7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2380 (November 2009).

§507. Pretrial Confinement

A. Pre-trial confinement is not authorized. In the case of arrest pursuant to a warrant approved by the Adjutant General, the arresting authority will release the accused to the unit as expeditiously as possible. Overnight pre-trial confinement pursuant to the execution of National Guard warrants is not authorized unless approved by an exception to policy by the State Judge Advocate. In no case will a member of the National Guard be placed in the general population of any confinement facility.

B. Lesser Forms of Restraint. Less serious forms of restraint must always be utilized. The commander shall consider whether the servicemember could safely remain in the unit, at liberty or under some form of restriction, or conditions of liberty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2381 (November 2009).

§508. Bail

A. General. Any person in confinement charged with or convicted of an offense under the LCMJ is entitled to bail pending finality of the sentence. The order fixing the amount of bail shall be in writing, specify the amount of the bail, and designate the officer(s) authorized to accept the bail, and must be signed by the convening authority. [Figure 5-3.] Any person in confinement on a charge under the LCMJ may invoke the supervisory jurisdiction of a military judge on the claim that the convening authority has improperly refused bail or for a reduction of bail. The amount of such bail shall be fixed by the convening authority that ordered the confinement, and shall not exceed the following limits:

1. Summary Court-Martial—\$500.00;
2. Special Court-Martial—\$1000.00;
3. General Court-Martial—\$2500.00.

B. Factors in Determining Bail Amount. The amount of bail shall be such as in the judgment of the convening authority will insure the presence of the accused before the proper court-martial, having regard to:

1. the seriousness of the offense charged;
2. the weight of the evidence against the defendant;
3. the previous criminal record, if any, of the defendant;
4. the ability of the defendant to give bail; and
5. any other circumstances affecting the probability of the defendant's appearance.

C. Procedures. The qualifications of sureties, the bail undertaking, the various types of bail authorized, the rights of surety, the surrender or arrest of the accused, and the exoneration of the surety, shall be governed by the provisions of Articles 323 to 343 inclusive of the Louisiana Code of Criminal Procedure. Proceedings relating to the

forfeiture of bail and the collection thereof shall be conducted by the appropriate district attorney under the provisions of LA R.S. 15:85 to LA R.S. 15:89 inclusive, before the district court of the district in which the court-martial proceeding was held. Bail bond forms are located at Figures 5-5 and 5-6.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2381 (November 2009).

§509. Preparation of the Charge Sheet

A. General. In preparing charges for trial by courts-martial, the unit commander will use the current DD Form 458, Charge Sheet. Detailed instructions for completing the Charge Sheet may be found at R.C.M. 307 and at Figure 5-8 of this Regulation. An example of a completed Charge Sheet is located at Figure 5-7 any person subject to the LCMJ may prefer charges, but trial counsel should always draft or review charges before they are preferred. While the unit commander is responsible for the preparation of the Charge Sheet, there is no legal requirement that he do it personally. He should, however, supervise its prompt and proper preparation and forwarding. Once the charge and specification has been prepared and signed under oath, it is a public record, and other than minor administrative changes, should not be altered, except upon the advice of a judge advocate. For minor administrative or typographical corrections, the officer making same should initial in the margin in the correction.

B. Timeliness. When the Unit Commander has made the decision to prefer court-martial charges and to recommend trial by courts-martial, he should promptly dispose of the matter. It is longstanding military policy, both in the active forces and in the National Guard that military justice be given priority.

C. Personal Data. Section I of the Charge Sheet is personal data concerning the accused. This information is generally found in the accused's personnel file. The unit commander should have reviewed this personnel file before making his decision on disposition of the offense during his preliminary investigation. The accused's "grade or rank" (Block 3) is his military title (such as PFC) and his "pay grade" (Block 4) is his numerical designation (such as E-3). The initial date of the accused's current service is the date of his latest enlistment (Block 6). Paragraph 7 "Pay per Month" is the normal MUTA-4 pay which the accused would receive for one month to be inserted in the "basic" block. Louisiana National Servicemembers do not receive "sea or foreign duty pay". Block 8, entitled "nature of restraint of accused" should show all types of restraint imposed, and block 9 should show the corresponding duration (inclusive dates) of the restraint and any changes.

D. Charges and Specifications

1. General. Section II of the Charge Sheet is the section for charges and specifications. This is the most important part of the Charge Sheet. The "charge" indicates the section of the Louisiana Code of Military Justice violated. Since DD Form 458, Charge Sheet, is a federal form, the reference in Section II to a "violation of the UCMJ, Article ___" should be changed to "violation of the Louisiana Code of Military Justice, Article ___." The "specification," which is under the charge, must be written

so that it clearly advises the accused of the date, time, place and circumstances of the alleged offense against him. The specification states the facts and circumstances which constitute a violation of the particular section of the LCMJ alleged to be violated. Neither the misdesignation of an article nor the failure to designate any article is ordinarily material so long as the specification alleges an offense over which courts-martial have jurisdiction. If there is only one charge, it is not numbered. When there is more than one charge, each is numbered with a Roman numeral. [R.C.M. 307(c).]

2. Elements of the Offense. Part IV of the Manual for Courts-Martial, United States, lists each essential element of all equivalent punitive Articles in the LCMJ. It is imperative that commanders familiarize themselves with the contents of these materials. The Unit Commander should refer to one of these references for a discussion of "proof" and an outline of the "elements of the offense." This will help the Commander to recognize criminal conduct and in drafting a clear, complete specification. When the specification is written, the Commander should be able to find each of the discussed "elements" in the specification.

3. Legal Advice. The unit commander should not alter the words in a model specification without legal advice from a Judge Advocate. If he, or his legal clerk, has any questions in the selection or drafting of a specification, he should contact the Staff Judge Advocate of his Direct Reporting Unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2381 (November 2009).

§510. Preferral and Transmittal of Charges

A. Preferral. Section III of the Charge Sheet is the preferral of charges. The person who believes that the specifications are true signs in block 11d as the accuser. The reference in the affidavit to the "Uniform Code of Military Justice" should be changed to read "Louisiana Code of Military Justice" by deleting the word "Uniform" and substituting in its place the word "Louisiana. While any person subject to the Louisiana Code of Military Justice may be an accuser, it is customary for the Unit Commander to sign as the accuser. A superior authority may not order anyone to act as accuser. The signing of the Charge Sheet by the accuser must be done in the presence of a commissioned officer serving in the capacity of Adjutant, Assistant Adjutant, acting Adjutant, or Personnel Adjutant. [See LCMJ Article 136.] Each unit is authorized to detail in writing an officer in the capacity of acting Adjutant for the purpose of taking such oaths.

B. Informing the Accused. After charges have been preferred, the accused's commanding officer or his designated representative will inform the accused of the charges preferred against him, and will sign the certificate confirming such that is located at the top of page two of the Charge Sheet. This individual shall also advise the accused regarding his right to consult with legal counsel pursuant to LCMJ Article 20. When, because of the unavailability of the accused, this notice cannot be accomplished by reading the charges to him, a letter notifying him of the charges mailed

by first class mail to the accused at his address as shown on the unit alert roster will suffice, but the certificate will be amended to reflect that the accused was informed of the charges by mail.

C. Receipt by the Summary Court-Martial Convening Authority. The unit commander next will have all copies of the Charge Sheet and related papers promptly sent to the commander exercising summary court-martial jurisdiction over his unit. This is normally the battalion or squadron commander. The summary court-martial authority or his representative (preferably the S-1) will indicate the time the sworn charges were received and sign the receipt of charges on Page two, Section IV.

D. Referral of Charges for Trial by Courts-Martial. If the convening authority decides to refer the case to trial by court-martial, the appropriate block in Section V of the Charge Sheet should be completed. Ordinarily in the Louisiana National Guard, such referral will be to a summary court-martial and the Charge Sheet should be delivered to the summary court officer, with the convening authority retaining a copy for his records. In lieu of referring the charges for disposition by court-martial, the convening authority may impose non-judicial punishment on the accused, or, if he determines that neither judicial nor non-judicial action is indicated, he may dismiss the charges. The convening authority, in any case, should advise the unit Commander who initiated the charges of his decision.

E. Service of Charges. Section V of the Charge Sheet also contains in the last item the service of the charges. In summary courts-martial, the most common type of court-martial held in the Louisiana National Guard, this service will ordinarily be accomplished by the summary court officer. If the charges have been referred to a special or general court-martial, the service will be accomplished by the trial counsel or at his direction. If, at time of preparation of the Charge Sheet, the accused is present at either at a unit training assembly or annual training, a copy of the Charge Sheet, and a copy of Notice of Court Martial, [See Figure 6-1] will be furnished the accused by the summary court officer or other official who will then sign the certificate which is the last item on page two of the Charge Sheet. At times other than annual training or unit training assemblies, the summary court officer will either serve the accused personally or mail a copy of the Charge Sheet and any Notice of Trial to the accused by first class mail to his home address as shown on the Unit Alert Rosters. A copy will also be furnished to any attorney of record representing the accused whose whereabouts are known or may reasonably be ascertained. A certificate of such service along with the date thereof shall be made part of the record. Service may be waived in writing by either the accused or his counsel. Unless waived, the delay for service of the charges upon the accused or his counsel must be accomplished not later than:

1. five days before trial for GCM;
2. three days before trial for SPCM;
3. 24 hours before trial for SCM. [See, generally,

LCMJ Article 35; R.C.M. 602.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2382 (November 2009).

§511. Transmittal of Charges

A. General. In addition to the Charge Sheet, often other documents must be prepared and forwarded by the accused's commander. [See Figures 5-1 and 6-1.] A copy of each such record should be retained by the unit for its files.

B. Minor Offenses. When charges are submitted with a view to trial by summary court-martial or non-judicial punishment action, they need not be forwarded by a formal letter of transmittal, but should be accompanied by evidence of previous court martial convictions (DD Form 493) and of previous non-judicial punishments of the accused and sufficient information about the circumstances, including an informal summary of the expected evidence, to enable the commander receiving them to make an intelligent disposition of the case without an additional investigation.

C. Serious Offenses. When charges are submitted with a view to trial by special or general court-martial, they will be forwarded by a letter of transmittal signed personally by the forwarding officer. The letter will include, or carry as enclosures, the following:

1. A summary of the evidence expected from each witness or other source. The signature of each witness to the summary of his testimony will be obtained unless the procurement of the signature(s) is not possible or would unduly delay the forwarding of the charges;

2. Copies of all reasonably available documentary evidence. Originals should not be forwarded with the Charge Sheet and letter of transmittal. The original documentary evidence should be properly marked, preserved, and referred to in the charges or the letter of transmittal with a statement as to where it may be found.

3. Evidence of admissible previous convictions by court-martial and non-judicial punishments, which, in the case of enlisted persons, is usually in the form of an attested copy of the pertinent entries in the accused's personnel records.

4. Explanation of any unusual features of the case, including such matters as the character of the accused's military service before the offense charged and his record before entry into the military service, if known.

5. Specific recommendation as to the disposition of the charges.

6. Certification that Judge Advocate advice has been obtained in the matter if the transmittal recommends a special or general court-martial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2383 (November 2009).

§512. Time Limits

A. General. The prompt disposition of charges is essential to our system of military justice. An unexplained delay in the processing of charges at any stage may result in dismissal of the charges. When a decision concerning a delay is brought up at trial, the burden is on the government to justify the delay, to show that it was not intentional nor due to an oppressive design or neglect on the part of the National Guard. The period of time for which the government is accountable starts to run when the accused is placed in restraint or when charges have been preferred. The following are guidelines for avoiding unreasonable delays in the processing of the court-martial charges:

1. promptly send all court-martial files to higher headquarters;

2. investigate an incident immediately after it happens;

3. do not allow a case to remain in a unit because of the pressure of other duties;

4. if the accused is placed in pre-trial confinement, he will be served with a copy of the charges and taken into military custody or brought before the court for trial not later than 24 hours after the commencement of his pre-trial confinement. Exception to this policy may only be granted by the State Judge Advocate or his designated representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2383 (November 2009).

§513. Detailing of Military Judge

A. In accordance with Article 26 of the LCMJ the authority convening the General or Special Court Martial shall detail a Military Judge thereto. A Military Judge will be made available to the convening authority by the State Judge Advocate. The written documentation detailing the military judge may be included in the court-martial convening order. [See Figure 5-12] Nothing in this regulation precludes the detail of a military judge from another armed service to preside over courts-martial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2383 (November 2009).

§514. Detailing of Trial Counsel

A. Trial Counsel will be made available to the convening authority by the State Judge Advocate or the DRU SJA. The order detailing trial counsel will be in writing, and will be announced orally on the record during the court-martial, and will indicate by whom the trial counsel was detailed. The written documentation detailing the trial counsel may be included in the court-martial convening order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2383 (November 2009).

§515. Assignment of Defense Counsel

A. Chief, LANG TDS will make available to GCMCA's and SPCMCA's military trial defense counsel for detail to all Special and General Courts Martial. The name of the military trial defense counsel will appear on the convening order and announced orally at the court martial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2383 (November 2009).

§516. Detailing and Duties of Court Members

A. The convening authority shall detail qualified persons as members for courts-martial. He may detail as members of general and special courts-martial persons under his command or others made available by another commander even if those persons are members of an armed force different from that of the convening authority or accused.

B. Qualifications. The members detailed to a court-martial shall be those persons who in the opinion of the convening authority are best qualified for the duty by reason of their age, education, training, experience, length of service, and judicial temperament. Each member shall be a member of the Louisiana National Guard and shall be:

1. a commissioned officer;
2. a warrant officer, except when the accused is a commissioned officer; or
3. an enlisted person if the accused is an enlisted person and has made a timely request under R.C.M. 503(a)(2).

C. Enlisted Members. An enlisted accused may, before assembly, request orally on the record or in writing that enlisted persons serve as members of the general or special court-martial to which that accused's case has been or will be referred. If such a request has been made, an enlisted accused may not be tried by a court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total number of members unless eligible enlisted members cannot be obtained because of physical conditions or military exigencies. If the appropriate number of enlisted members cannot be obtained, the court-martial may be assembled, and the trial may proceed without them, but the convening authority shall make a detailed written explanation why enlisted members could not be obtained which must be appended to the record of trial.

D. Duties. The members of a court-martial shall determine whether the accused is proved guilty and, if necessary, adjudge a proper sentence, based on the evidence and in accordance with the instructions of the military judge. Each member has an equal voice and vote with other members in deliberating upon and deciding all matters submitted to them, except as otherwise specifically provided in these rules. No member may use rank or position to influence another member. No member of a court-martial may have access to or use in any open or closed session this Regulation, the Manual for Courts-Martial, reports of decided cases, or any other reference material, except for instructions or other documents provided by the military judge.

E. President. The president of a court-martial shall be the detailed member senior in rank then serving. He shall have the same duties as other members and shall also preside over closed sessions of the members of the court-martial during their deliberations and speak for the members of the court-martial when announcing the decision of the members or requesting instructions from the military judge.

F. Changes of Members

1. Before assembly. Before the court-martial is assembled, the convening authority may change the members of the court-martial without showing cause. The convening authority may delegate authority to excuse individual members to the State Judge Advocate or legal officer or other principal assistant to the convening authority. Before the court-martial is assembled, the convening authority's delegate may excuse members without cause

shown; however, no more than one-third of the total number of members detailed by the convening authority may be excused by his delegate in any one court-martial. After assembly, the convening authority's delegate may not excuse members.

2. After assembly. After assembly, no member may be excused, except:

- a. by the convening authority for good cause shown on the record;
- b. by the military judge for good cause shown on the record;
- c. as a result of a challenge under R.C.M. 912.

3. New Members. New members may be detailed after assembly only when, as a result of excusals under this Paragraph, the number of members of the court-martial is reduced below six, or the number of enlisted members, when the accused has made a timely written request for enlisted members, is reduced below one-third of the total membership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2383 (November 2009).

§517. Subpoenas

A. Convening Authority's Responsibility. The Convening Authority is responsible for assuring that witnesses sought by both government and defense are timely subpoenaed. Requests for subpoenas shall be made at the earliest practicable time to allow ample time for service. Unless otherwise directed, 30 days prior to scheduled trial is considered reasonable. [See Paragraph 4-8, Figures 5-2, 6-1 and 6-2.]

B. Civilian Witnesses. Civilian personnel will not be ordered to appear as witnesses at any SCM or SPCM unless prior approval has been obtained from the SJA or his designee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2384 (November 2009).

§518. Expenses

A. General. The expenses of a court-martial other than pay and allowances of members and counsel detailed to the court will generally be paid with State funds.

B. Expenses of Witnesses. Subpoenas or other process issued to witnesses will be served as provided by LCMJ Article 46. The process will be accompanied by a letter explaining the penalty for failure to obey the process as outlined in LCMJ Article 47. The letter will also advise the witness of any statutory entitlement to expenses and the procedure for collecting payment. If state funds are to be used for payment of these expenses, the issuing authority will coordinate with the Office of the State Judge Advocate prior to issuing the process and letter.

C. Expenses of Court Reporters and Interpreters. Court reporters and interpreters may be employed when required by the LCMJ or when directed by TAG. A court reporter will

not be provided in a non-judicial punishment proceeding or a summary court-martial. Scheduling and compensation of such court reporters and interpreters shall be coordinated by the Office of the State Judge Advocate.

D. Government Transportation. Government transportation will be utilized by counsel and members detailed to the court-martial unless not available. Travel Orders will be issued as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2384 (November 2009).

§519. Docketing of Trials

A. The Convening Authority's SJA shall review all requests for SPCM or GCM and, if approved by the Convening Authority, the SJA shall contact the Military Judge to arrange for arraignment and trial. te (SJA) by the quickest means available to announce this decision. The LANG TDS shall provide the name of the designated military defense counsel (DC). The State Judge Advocate shall provide the name of the designated Military Judge (MJ), and a case number. The Convening Authority's SJA will then contact the DC and coordinate a tentative trial date. Thereafter, the Convening Authority's SJA shall contact the MJ for final selection of a trial date. The Convening Authority's SJA shall advise the MJ whether a court reporter's presence is specifically sought for the case. The MJ shall advise the State Judge Advocate of the final trial date selected, whether a court reporter will be required, and any other matters of special interest and significance. Appropriate notices of trial and subpoenas shall be timely dispatched after coordination with all parties. [See Figures 6-1, 6-2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2385 (November 2009).

§520. Continuance Requests

A. Requests for the continuance of regularly scheduled courts-martial are matters within the discretion of the assigned military judge. Requests based on failure to timely take appropriate action (e.g. witness subpoena requests) shall

be looked on with disfavor, and shall be granted only in cases where a substantial and demonstrable prejudice is likely to result there from.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2385 (November 2009).

§521. Logistical Arrangements

A. The Convening Authority's SJA shall be responsible for conduct of the entire case, including summoning of all witnesses and production of documentary evidence, arranging for a courtroom facility, coordinating requests for court reporters with Office of State Judge Advocate, and coordination of trial details with the military judge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2385 (November 2009).

§522. Article 32 Investigations

A. The conduct of an LCMJ Article 32 Investigation shall be considered the principal or primary duty of the Investigating Officer (IO) until completed. The officer directing the investigation shall provide adequate clerical and staff assistance to the IO. Officers designated to conduct LCMJ Article 32 investigations shall consult with the Trial Counsel prior to undertaking their duties, and shall follow published guidance (active component and otherwise) concerning such tasks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2385 (November 2009).

§523. Plea Bargains and Pretrial Agreements

A. The convening authority may properly agree to refer charges to a certain type of court-martial, withdraw one or more charges or specifications from the court-martial, have trial counsel present no evidence as to one or more specifications, and/or take specified action on the sentence adjudged by the court-martial as set forth in R.C.M. 705. [See example at Figure 5-10.]

B. Transmittal of Court-Martial Charges (Figure 5-1)

UNIT HEADING

LANG-XXX

July 5, 2008

MEMORANDUM FOR: Commander, 256th Infantry Brigade (M), 1806 Surrey St., Lafayette, LA 70508

SUBJECT: Referral of Charges to Court-Martial

Forwarded herewith are sworn court-martial charges for appropriate disposition.

Summaries of expected testimony and documentary evidence upon which the charges are based, if any, are enclosed.

The following material witnesses are expected to be available at the time of the trial:
(List Rank(s), Name(s), and Address (es))

There is evidence of _____ (list number, if any) of admissible previous court-martial conviction(s) of the accused. A duly authenticated extract copy of the accused's military records of previous conviction s showing such conviction(s), if any, is enclosed.

The character of the accused's military service prior to the offense(s) charged has been (excellent) (good) (fair) (unsatisfactory).

I recommend trial by (Summary) (Special) (General) Court-Martial, and further recommend that the Servicemember (be) (not be) retained in the Louisiana National Guard. [If applicable: The accused was offered and declined Summary Court-Martial for the charge.]

HARD CHARGER
MAJ, IN, LANG
Commanding

C. Judge Advocate Pretrial Advice (Figure 5-2)

UNIT HEADING

LANG-xxx

DATE

MEMORANDUM FOR: Commander, 256th Infantry Brigade (M), 1806 Surrey St., Lafayette, LA 70508

SUBJECT: Advice on Disposition of Court-Martial Charges UP R.C.M. 406

1. ACCUSED: SSG JOHN DOE, 000-00-0000, Co A, 199th SPT BN, 256th INF BDE.

PERSONAL DATA: The accused's records indicate no prior court-martial convictions or non-judicial punishment.

DOB/AGE: 8 Dec 56 (35)
RACE: White
TIME IN SVC: 15 yrs, 1 mo.
CIV EDUCATION: HS Graduate
MIL EDUCATION: Advanced Course
ETS: 21 Feb 94
MARITAL STATUS: Married
DEPENDENTS: 2
PRETRIAL CONF: None

CHARGES:

Disrespect [LCMJ Article 89]
Dereliction [LCMJ Article 92]

LEGAL CONCLUSIONS: After reviewing the attached charges and allied papers, I have reached the following conclusions:

Each charge/specification alleges an offense under the LCMJ;

The allegations in each charge/specification are warranted by the evidence;

There is court-martial jurisdiction over the accused and all charged offenses.

RECOMMENDATIONS: Company and Battalion Commanders recommend trial by Special Court-Martial. I concur in recommendation of Special Court-Martial.

LEGAL EAGLE
LTC, JA
Staff Judge Advocate

Attachments
(Charge Sheet)
(Allied Papers)

D. Arrest Warrant/Pretrial Confinement Order (Figure 5-3)

STATE OF LOUISIANA
Military Department

WARRANT FOR ARREST

TO ALL PEACE OFFICERS OF THE STATE OF LOUISIANA AND PROVOST MARSHALLS OF THE ARMED FORCES OF THE STATE OR FEDERAL GOVERNMENT, GREETINGS:

Pursuant to Articles 7 through 14 of the Louisiana Code of Military Justice (LA Revised Statutes 29:107 through 114), and considering the attached affidavit supporting a determination that probable cause exists to believe that an offense under the LCMJ was committed by the Servicemember named herein, YOU ARE HEREBY DIRECTED TO ARREST:

Name, Rank, Social Security Number, Address

whose description is as follows: Race: Weight: Height: DOB: Hair: Eyes:

and bring said person either before me, the undersigned authority at Address of unit immediately, or, alternatively, to deliver said person to Name of Parish Jail or to the most appropriate detention facility within your jurisdiction for the purpose of answering to the State of Louisiana for an offense against the laws of said State, as follows: State LCMJ Article(s) from Charge Sheet as sworn to in writing before me. The accused may be fingerprinted and photographed if required by your agency, and while in your custody, the said individual shall be subject to the same treatment as other persons so restrained under the laws of the State of Louisiana. The accused may be released in to the custody of the Louisiana National Guard or admitted to bail in the amount of \$500.00 and given written notice to report within 24 hours to his National Guard unit at the address below. This warrant shall expire six months from the date of issuance, and authorized detention SHALL NOT EXCEED EIGHT HOURS from the time of arrest. Upon release the arresting authority shall deliver the attached written direct order to report to the unit before 1600 the following working day. Immediately after the accused is in custody, and again when he is released, you are required under LA R.S. 29:111(c) to notify his National Guard unit by calling the following persons:

Name and Rank ___ Daytime Phone No. ____ After Hours Phone No.

- 1.
- 2.

By authority of the Governor of the State of Louisiana, I affix my official signature, this _____ day of _____, 2008.

(Typed Name & Rank of Convening Authority ("CA") (CA's Signature)

(Military Unit and Location)

E. Affidavit in Support of Arrest Warrant (Figure 5-4)



**STATE OF LOUISIANA
Military Department**

AFFIDAVIT IN SUPPORT OF WARRANT FOR ARREST

STATE OF LOUISIANA

PARISH OF _____

Before me, the undersigned authority appeared _____
(Affiant's name, address, and rank, if applicable)

who, being sworn, stated that the following facts are true to the best of his knowledge and belief:

On the _____ day of _____, 19____, in the Parish of _____

_____ did then and there commit the offense(s) of LCMJ Article(s) _____
(name and rank)

Affiant bases his belief that the offense(s) was (were) committed on the following facts:

STATE OF LOUISIANA
Military Department

COURT-MARTIAL APPEARANCE (BAIL) BOND - SURETY

STATE OF LOUISIANA

PARISH OF _____ (Date)

KNOW ALL MEN BY THESE PRESENTS THAT WE _____ (Defendant)

as principal, and _____, as surety, are held and firmly bound unto the State of Louisiana Military Department in the penal sum of \$ _____, for the payment of which sum, well and truly to be made and all additional fees and expenses that may be incurred by peace officers in rearresting principal in the event the conditions of this bond are violated, we do bind ourselves and each of us, our heirs, executors and administrators, solidarily, as follows.

The conditions of the above obligation is such that, whereas the above named principal stands charged with a violation of the penal provisions of the Louisiana Code of Military Justice (LCMJ), as follows:

_____, for which offense trial by court-martial is authorized.
(Article Number and Description)

Now if the said principal shall appear at the _____ (Name and Address of Court)

to answer the charge or any related charge(s) and shall appear at all stages of the proceedings thereafter scheduled until this matter is concluded, and shall at all times hold himself amenable to the orders and process of the court, and, if convicted, shall appear for pronouncement of the verdict, sentence, post-conviction hearings, and satisfaction of sentence, and, during pendency of these proceedings, shall keep his military unit advised of his correct home and work addresses and telephone numbers; shall accept and receipt for all mail sent to him by the military; shall satisfactorily attend and participate in all military duty which he is ordered to perform (and the principal acknowledges that he is responsible for informing himself as to all duty dates, times, places, etc); and shall not leave the state without the written permission of the court, then this obligation shall become void. Otherwise, this obligation is to remain in full force and effect, and if the principal fails to perform any of these conditions, we (I) shall pay to the Louisiana Military Department

the sum of \$ _____ dollars.

Bond approved by witnessing accused's and surety's signatures this ____ day of _____, 19____.

By: _____, Custodian/Jailer

(Principal/Accused) (Current Home Address and Phone) (Current Work Address and Phone)

(Surety) (Current Home Address and Phone) (Current Work Address and Phone)

LANG FORM No.
Rev. Feb. 92



STATE OF LOUISIANA
Military Department

COURT-MARTIAL APPEARANCE (BAIL) BOND - CASH

STATE OF LOUISIANA

PARISH OF _____

KNOW ALL MEN BY THESE PRESENTS THAT I, _____

(Accused)

hereinafter referred to as the accused, deposited with the custodian of funds whose signature appears below, the sum of \$ _____, to insure my performance of the obligations set forth below.

The conditions of the above obligation is such that, whereas I stand charged with a violation of the penal provisions of the Louisiana Code of Military Justice (LCMJ), as follows: _____ for which offense trial by court-martial is authorized.

Now if I shall appear at the _____

(Name and Address of Court)

to answer the charge or any related charge(s) and shall appear at all stages of the proceedings thereafter scheduled until this matter is concluded, and shall at all times hold myself amenable to the orders and process of the court, and, if convicted, shall appear for pronouncement of the verdict, sentence, post-conviction hearings, and satisfaction of sentence, and, during pendency of these proceedings, shall keep my military unit advised of my correct home and work addresses and telephone numbers; shall accept and receipt for all mail sent to me by the military; shall satisfactorily attend and participate in all military duty which I am ordered to perform (and I acknowledge that I am responsible for informing myself as to all duty dates, times, places, etc); and shall not leave the state without the written permission of the court, then this obligation shall become void. Otherwise, this obligation is to remain in full force and effect, and if I fail to perform any of these conditions, the cash funds so deposited shall be forfeited to the Louisiana Military Department. I further agree to pay all fees and expenses that may be incurred by peace officers in rearresting me in the event I violate the conditions of this bond.

_____, Louisiana, this _____ day of _____, 19____.

Bond approved by witnessing accused's signature and accepting deposit of \$ _____ this _____ day of _____, 19____.

By: _____ Custodian/Jailer

(Principal/Accused)

(Current Home Address and Phone)

(Current Work Address and Phone)

LAJMD FORM No.
Rev. Feb. 92

SUMMARY COURT-MARTIAL RIGHTS NOTIFICATION/WAIVER STATEMENT

For use of this form, see AR 27-10; the proponent agency is TJAG.

1. STATEMENT CONCERNING REFUSAL TO ACCEPT QUALIFIED COUNSELING, ARTICLE 20, UCMJ AND UNDERSTANDING OF RIGHTS

- a. On _____, I was afforded an opportunity to consult with legal counsel before making my decision to consent to Summary Court-Martial proceedings under Article 20, UCMJ.
(Date)
- b. I have decided not to see counsel in connection with this action.
- c. I understand my rights under Article 20, UCMJ, including my right to object to trial by Summary Court-Martial, punishment limitations, potential use of the record of Summary Court-Martial in any subsequent courts-martial, and other consequences of my decision.
- d. I voluntarily decide to consent to trial by Summary Court-Martial.

TYPED OR PRINTED NAME AND RANK OF SERVICE MEMBER	SIGNATURE OF SERVICE MEMBER
TYPED OR PRINTED NAME & RANK OF SUMMARY COURT-MARTIAL OFFICER	SIGNATURE OF SUMMARY COURT-MARTIAL OFFICER

2. STATEMENT ACKNOWLEDGING QUALIFIED LEGAL COUNSEL FOR ARTICLE 20, UCMJ, AND STATEMENT OF UNDERSTANDING OF RIGHTS

- a. On 18 September 1984, I consulted with CPT James Watt who explained my rights to me under the provisions of Article 20, UCMJ, to include my right to object to trial by Summary Court-Martial, punishment limitations, potential use of the record of Summary Court-Martial proceedings in any subsequent courts-martial, and other consequences of my decision.
(Date) *(Name and Rank of Defense Counsel)*
- b. I understand my rights and voluntarily decide to consent to trial by Summary Court-Martial.

TYPED OR PRINTED NAME AND RANK OF SERVICE MEMBER	SIGNATURE OF SERVICE MEMBER
PFC Arthur N. Sherry	<i>Arthur Sherry</i>

- c. I have advised PFC Arthur N. Sherry of his or her statutory and regulatory rights with regard to this Summary Court-Martial and the possible consequences of his or her consent or objection to trial by Summary Court-Martial.
(Name and Rank of Service Member)

TYPED OR PRINTED NAME, RANK, & BRANCH OF DEFENSE COUNSEL	SIGNATURE OF DEFENSE COUNSEL
CPT James Watt	<i>James Watt</i>

3. REFUSAL TO ACKNOWLEDGE RECEIPT OF ADVICE – ARTICLE 20, UCMJ

After I advised _____ of his or her rights to consult with legal counsel before making a decision to consent or object to Summary Court-Martial proceedings under Article 20, UCMJ, he or she refused to complete and sign an acknowledgement of receipt of the advice.
(Name (First, MI, Last)) *(Rank)* *(SSN)*

TYPED OR PRINTED NAME & RANK OF SUMMARY COURT-MARTIAL OFFICER	SIGNATURE OF SUMMARY COURT-MARTIAL OFFICER

REMARKS

I. Charge Sheet (Figure 5-9)

CHARGE SHEET				
I. PERSONAL DATA				
1. NAME OF ACCUSED (Last, First, MI) SNUFFY, JOE I.		2. SSN 999-99-9999	3. GRADE OR RANK SGT	4. PAY GRADE E5
5. UNIT OR ORGANIZATION HEADQUARTERS SUPPORT COMPANY, 205 TH ENGINEER BATTALION 104 AVENUE B, BOGALUSA, LA 70427			6. CURRENT SERVICE	
			a. INITIAL DATE 19 OCTOBER 2002	b. TERM 8 YEARS
7. PAY PER MONTH			8. NATURE OF RESTRAINT OF ACCUSED	
a. BASIC \$299.64	b. SEA/FOREIGN DUTY N/A	c. TOTAL \$299.64	None	
			9. DATE(S) IMPOSED N/A	
II. CHARGES AND SPECIFICATIONS				
10. CHARGE I: VIOLATION OF THE LCMJ, ARTICLE 86.				
SPECIFICATION: In that Sergeant Joe I. Snuffy, a member of the Louisiana National Guard did, at 205 th Engineer Battalion Armory, Bogalusa, Louisiana, on or about 4 April 2008 without authority, fail to go to his appointed place of duty, to wit: 1800 first formation 4 April 2008 and did remain so absent until 6 April 2008.				
CHARGE II: VIOLATION OF THE LCMJ, ARTICLE 92.				
SPECIFICATION: In that Sergeant Joe I. Snuffy, a member of the Louisiana National Guard, at 205 th Engineer Battalion Armory, Bogalusa, Louisiana, on or about 4 April 2008, having knowledge of a lawful order issued by Sergeant First Class Walter B. Owens to "report to drill," or words to that effect, an order which it was his duty to obey, did fail to obey the same by wrongfully going to Oregon without permission to leave drill.				
CHARGE III: VIOLATION OF THE LCMJ, ARTICLE 112.				
SPECIFICATION: In that Sergeant Joe I. Snuffy, a member of the Louisiana National Guard was, at 205 th Engineer Battalion Armory, Bogalusa, Louisiana, on or about 16 March 2008, found drunk while on duty as Battalion NBC Noncommissioned Officer.				
III. PREFERRAL				
11a. NAME OF ACCUSER (Last, First, MI) YOU, DID T.		b. GRADE E6	c. ORGANIZATION OF ACCUSER HEADQUARTERS SUPPORT COMPANY, 205 TH ENGINEER BATTALION	
d. SIGNATURE OF ACCUSER			e. DATE	
<p>AFFIDAVIT: Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above named accuser this <u>3RD</u> day of <u>MAY</u>, <u>2008</u>, and signed the foregoing charges and specifications under oath that he/she is a person subject to the Uniform Code of Military Justice and that he/she either has personal knowledge of or has investigated the matters set forth therein and that the same are true to the best of his/her knowledge and belief.</p> <p>_____ 205TH ENGINEER BATTALION <i>BETTER B. HONEST</i> <i>Organization of Officer</i> <i>Typed Name of Officer</i></p> <p>_____ ADJUTANT <i>O-3</i> <i>Official Capacity to Administer Oath</i> <i>Grade</i> <i>(See R.C.M. 307(b) - must be a commissioned officer)</i></p> <p>_____ <i>Signature</i></p>				

DD FORM 458, MAY 2000

PREVIOUS EDITION IS OBSOLETE.

12. On 3 MAY, 2008, the accused was informed of the charges against him/her and of the name(s) of The accuser(s) known to me (See R.C.M. 308 (a)). (See R.C.M. 308 if notification cannot be made.)

JOHN T. BOOKER
Typed Name of Immediate Commander

HEADQUARTERS SUPPORT COMPANY,
205TH ENGINEER BATTALION
Organization of Immediate Commander

O-3
Grade

Signature

IV. RECEIPT BY SUMMARY COURT-MARTIAL CONVENING AUTHORITY

13. The sworn charges were received at _____ hours, 3 May, 2008 at 205TH ENGINEER BATTALION
Designation of Command or

BOGALOUSA, LOUISIANA
Officer Exercising Summary Court-Martial Jurisdiction (See R.C.M. 403)

FOR THE ¹ _____ COMMANDER

BETTER B. HONEST
Typed Name of Officer

ADJUTANT, 205TH ENGINEER BATTALION
Official Capacity of Officer Signing

O-3
Grade

Signature

V. REFERRAL; SERVICE OF CHARGES

14a. DESIGNATION OF COMMAND OF CONVENING AUTHORITY	b. PLACE	c. DATE (YYYYMMDD)
<u>205TH ENGINEER BATTALION</u>	<u>BOGALOUSA, LOUISIANA</u>	

Referred for trial to the Summary Court-martial convened by this detail of Major IDE P. Judge
as Summary Courts-martial on _____,
3 May, 2008, subject to the following instructions:
None.

By _____ of _____
Command or Order

EYE C. ALL
Typed Name of Officer

COMMANDER
Official Capacity of Officer Signing

O-5
Grade

Signature

15. On _____, _____, I (caused to be) served a copy hereof on (each of) the above named accused.

Typed Name of Trial Counsel

Grade or Rank of Trial Counsel

Signature

FOOTNOTES: 1 — When an appropriate commander signs personally, inapplicable words are stricken.
2 — See R.C.M. 601(e) concerning instructions. If none, so state.

DD FORM 458 (BACK), MAY 2000

J. Charge Sheet Completion Explanation Item (Figure 5-10)

- Item 1 Enter last name, first name, and middle initial of accused.
- Item 2 Enter Social Security Account Number of accused.
- Item 3 See AR 600-200, Table 1-1, for proper rank/grade designations. Example: PFC; SFC.
- Item 4 Enter numerical pay grade designation of officer or enlisted member, as appropriate. Example: E-4; E-1.

- Item 5 Enter complete military address of unit to which the individual is assigned.
- Item 6 Enter initial date and term of current enlistment.
- Item 7 Enter amount of base pay for one inactive duty training period. Louisiana National Servicemembers do not receive "sea or foreign duty pay."
- Item 8 Enter nature of any restraint imposed upon the accused at the time the charge sheet is prepared. Example: Arrest in

Quarters; Confinement. If no restraint is imposed, enter NONE.

Item 9 Enter the date that restraint in Item 8 was imposed. If no restraint is imposed, enter N/A.

Item 10 Change "UCMJ" to "LCMJ." Each violation of a different section of the LCMJ requires a separate charge. Charges, if more than one, are numbered by Roman numerals. Examples: I; II; III; IV, etc. If only one charge is made, it need not be numbered. In the blank space following the word "Article," enter the appropriate section of the LCMJ. Each specification under a charge is numbered with Arabic numerals. Example: 1; 2; 3; 4, etc. If only one specification is shown under a charge, it need not be numbered. Do not use abbreviations or SSAN of the accused in any specification. Specifications will be free of typographical errors. Consult Part IV of the Manual for Courts-Martial, United States, for sample specifications. Do not alter the words in a model specification without advice from the servicing staff judge advocate.

Item 11 For "preferral of charges," enter name, grade, and organization of accuser. While it is customary for the unit commander to sign as accuser, any person subject to the LCMJ may be an accuser, though that individual may not thereafter refer the charges to a GCM or SPCM. [See LCMJ Article 30.] Signing for the accuser is not authorized, and rubber stamp signatures are not authorized. Charges must be sworn in all cases, with the accuser signing the charge sheet in the presence of the servicing staff judge advocate, his assistant, or one of the individuals so authorized to administer oaths for military justice purposes. [See LCMJ Article 136.] No accused may be tried on unsworn charges over his

objection. Only a commissioned officer may swear the accuser to the charges. [LCMJ Article 136.]

Item 12 Enter date accused was notified of the charges. Enter name, grade, and organization of person informing accused of the charges. If possible, the accused's commander should make this notification personally. If personal notice is not possible, a letter notifying the accused should be mailed using first class postage, and the charge sheet should be noted to so reflect. The one notifying the accused of the charges should also complete the DA Form 5111-R, Summary Court-martial Rights Notification/Waiver Statement. [See Figure 5-6.]

Item 13 The unit commander then forwards the charge sheet to the Summary Court-martial Convening Authority, usually the battalion or squadron commander. The time and date on which the charges are received by the SCM Convening Authority is critical as it begins the statute of limitations clock running. [LCMJ Article 43.]

Item 14 The appropriate convening authority's decision on the level of court-martial is entered in this blank.

Item 15 Enter record of service of the charge sheet upon the accused. The Summary Court-martial Officer normally serves SCM process. It is Trial Counsel's responsibility to insure that timely service is made for SPCM and GCM. Service may be accomplished either by personal deliver or first class mail.

See R.C.M. 307 for further guidance. All blocks of Charge Sheet must carry an entry, and all changes, corrections, additions, and deletions must be initialed by the person who makes them.

K. Pretrial Agreement (Figure 5-11)

STATE OF LOUISIANA SPECIAL COURT-MARTIAL NO. _____

versus

PRIVATE E-1 JOHN DOE

256TH INFANTRY BRIGADE (M)

LOUISIANA ARMY NATIONAL GUARD

OFFER TO PLEAD GUILTY

I, Private E-1 John Doe, the accused in a Special Court-Martial now pending, have had an opportunity to examine the charges preferred against me, the investigating officer's report, and the statements and documents attached thereto; and after consulting with my defense counsel, CPT _____, and being fully advised that I have a legal and moral right to plead not guilty to the Charge and Specification under which I am about to be tried, to wit:

Charge: Violation of the Louisiana Code of Military Justice, Article 86, containing one specification of AWOL from 4-11 July, 1992.

I offer to plead guilty to the Charge and the Specification, provided that the convening authority will not approve any sentence in excess of the sentence attached hereto as Appendix I.

In offering the above agreement, I declare that:

I agree upon acceptance of this offer to enter into a written stipulation with the trial counsel of the facts and circumstances surrounding the offenses and further agree that this stipulation may be used to inform the court-martial of matters pertinent to an appropriate finding and/or sentence. I am satisfied with the defense counsel who has been detailed to defend me. This offer

to plead guilty originated with me and no person or persons have made any attempt to force or coerce me into making this offer to plead guilty. My defense counsel has advised me of the meaning and effect of my guilty plea and I understand the meaning and effect thereof. I understand that I may request a withdrawal of this plea at any time before sentence is announced and the military judge determines whether the request should be granted. I understand this offer and agreement and the fact that I have agreed to enter into the stipulation of fact as set out above. If my plea is not accepted, this offer to stipulate is null and void. I further understand that this agreement will be automatically canceled upon the happening of any of the following events:

Failure of agreement with the trial counsel on the contents of the stipulation of fact;
The withdrawal by either party from the agreement prior to trial;
The modification at any time of the agreed stipulation of fact without consent of trial counsel or myself; The changing of my plea by anyone during the trial from guilty to not guilty; or, The refusal of the Military Judge to accept my plea of guilty.

DEFENSE COUNSEL

ACCUSED

The foregoing is (accepted) (not accepted).
_____, Louisiana, this ___ day of _____, 19__.

COMMANDER

L. Pretrial Agreement, Continued (Figure 5-12)

On a separate sheet, the sentencing limitation language should be typed, substantially as follows:

APPENDIX I

I, Private E-1 John Doe, offer to plead guilty to the Charge and Specification herein provided the convening authority will not approve a sentence in excess of a fine of not more than \$75.00 and confinement of not more than 60 days.

_____, Louisiana, this ___ day of _____, 19__.

DEFENSE COUNSEL ACCUSED

The foregoing is (accepted) (not accepted).

COMMANDER

M. Court Martial Convening Order (Figure 5-13)

UNIT HEADING

LANG-xxx

DATE

SPECIAL COURT-MARTIAL CONVENING ORDER 08-XX

1. All prior orders, as pertains to a Special Court-Martial are hereby rescinded.
2. A Special Court-Martial is hereby convened. It may proceed to try such person(s) as may be properly brought before it. LAARNG Judge Advocates are appointed with the approval of the State Judge Advocate. The Court will be constituted as follows:

MILITARY JUDGE

COL WILLIAM R. JUSTICE, Louisiana State Guard, certified in accordance with LCMJ Article 26(b) and previously sworn in accordance with LCMJ Article 42(a).

TRIAL COUNSEL

MAJ JOE BROWN, JA, HHC 225TH EN BDE, LAARNG, is detailed as TRIAL COUNSEL, certified in accordance with LCMJ Article 27(c) and previously sworn in accordance with LCMJ Article 42(c).

DEFENSE COUNSEL

CPT BLEEDING HEART, JA, Joint Forces Headquarters, Trial Defense Service, LAARNG, is detailed as DEFENSE COUNSEL, certified in accordance with LCMJ Article 27(c) and previously sworn in accordance with LCMJ Article 42(c).

SPECIAL COURT-MARTIAL CONVENING ORDER 08-XX
DATE

MEMBERS

RANK	NAME	UNIT NAME
COL	ADAM, JOHN ROGER	JFHQ-LA(-)
COL	BOAT, JAMES ERNEST	JFHQ-LA(-)
MSG	BROCH, TED ANTHONY	JFHQ-LA(-)
MSG	COOK, JOSEPH GREG	HHC, 225TH EN BDE
LTC	CHARLES, JERRY SCOTT	HHC, 225TH EN BDE
MSG	DANGLE, DENISE MARIE	JFHQ-LA(-)
MSG	GENNERY, DONNA JEAN	JFHQ-LA(-)
1SG	GOLF, JEFFERY BLAKE	926 MOBILITY AUG CO (MAC)
CSM	HUBERT, FRANKLIN RAY	HSC 527 EN BN
COL	JONES, JORDAN TODD	61ST TROOP COMMAND
SFC	LANDRY, LEROY	61ST TROOP COMMAND
CPT	MACFLUFF, AARON	JFHQ-LA(-)
MSG	MCGIBB, ROBIN KENDALL	JFHQ-LA(-)
SFC	MCNOOFUNHOUSER, NATASHA	HHC 256TH INF BDE (IBCT)
1SG	NUGENT, ROBERT EUGENE	DET 1, 199TH REG (LDR)
1SG	PARTINES, GREGORY ALFRED	812TH MED CO (AIR AMBL)
LTC	PINGER, LADENNA MAYEUR	JFHQ-LA(-)
1SG	ROUGH, DANNY ALFRED	843(-) HORIZONTAL EN CO
1SG	RALGER, JOHN MARTIN	CO C (MED), 199TH SPT BN
MAJ	RASSHOUSE, TINA DRACINE	JFHQ-LA(-)
MSG	RAINS, MELODY ANN	JFHQ-LA(-)
MSG	SALIVASTER, DENNIS JOYAU	HHD 139 SUPPORT GROUP (REG)
CPT	ST. THOMAS, JOHN GREGORY	769 EN BN
LTC	TALLWOOD, VINCENT DOUGLAS	HHD 139 SUPPORT GROUP (REG)
SGM	TOILRER, PAT RAY	JFHQ-LA(-)
MSG	VICTOR, JAMES MICHAEL	HHC 225TH EN BDE
SGM	WILLIAMS, GREG ALLEN	JFHQ-LA(-)

BY ORDER OF THE COMMANDER:

BENNETT LANDRENEAU
MG LANG
Commanding

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2385 (November 2009).

Chapter 6. Trial Procedures
§601. Applicability of Trial Guides

A. Court-Martial Trial Guides. A guide for the conduct of Summary Courts-Martial is located in Appendix B of this Regulation. The Military Judge’s Benchbook, DA Pam 27-9, shall be consulted as a guide for Special and General Courts-

Martial. The benchbook contains scripts for GCMs and SPCMs. Trial procedures shall conform generally to the Guide applicable to the level of court-martial being conducted.

B. Deviation Not Necessarily Reversible Error. Deviation from the suggested script language shall not constitute reversible error unless a substantial right of the accused is thereby violated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2396 (November 2009).

§602. Courtroom Procedure Rules

A. Pursuant to LCMJ Article 36, and unless otherwise specifically stated by the military judge or other competent authority, the following rules of courtroom procedures shall apply to all non-judicial punishment proceedings and courts-martial conducted under the LCMJ.

1. Decorum of Courtroom

Rule 1. As a traditional mark of respect for the dignity of the military judicial system, as represented by the military judge, all persons in the courtroom, without regard to grade, will rise when the military judge enters or leaves.

Rule 2. The military judge, either at a Section 39(a) session or at the time of assembling the court, should make known any special rules relating to conduct which the accused, counsel, witnesses, members of the court, and others in the courtroom will be expected to follow which are not set forth in the Rules for Courts-Martial, Part II of the Manual for Courts-Martial, United States, these rules, and the Louisiana Code of Military Justice.

Rule 3. Except as otherwise provided by the military judge, all military personnel who participate in the trial, including court members, counsel, the accused, the reporter, the bailiff, guards, and witnesses, shall appear in appropriate service uniform. Unless a court-martial is conducted in the field the uniform shall be Class A. Military witness who are called unexpectedly may be permitted to appear in other than service uniform to avoid undue delay.

Rule 4. The military judge should be attired in a judicial robe during open sessions of the trial of a case with members. In other cases he should appear in appropriate service uniform.

Rule 5. Spectators are encouraged to attend trials and shall be permitted to observe any trial unless otherwise ordered by the trial judge. Spectators may enter and leave the courtroom during open sessions of court, subject to the rules established by the military judge, but they will not be permitted to disturb or interrupt court proceedings by their conduct.

Rule 6. It is improper for a spectator to demonstrate agreement or disagreement with testimony or other events at trial, whether verbally, by facial expressions, shaking or nodding of the head, or by any other conduct. Spectators who violate this rule may be ordered from the courtroom by the military judge. All counsel are responsible for advising their clients, witnesses, and acquaintances of such persons who are in attendance, of the demeanor required of them while the court is in session.

Rule 7. Smoking will not be permitted in the courtroom during open sessions of the court, and may be permitted by the military judge at other times only if smoking is permitted in the room when it is not being utilized as a courtroom. Food and beverages, other than water, will not be permitted in the courtroom, except with the prior express permission of the military judge.

Rule 8. Photographs, sound recordings designed for public release, and radio and television broadcasts shall not be made in or from the courtroom during sessions of the trial except with prior approval of the military judge.

2. Conduct of Counsel

Rule 9. Counsel owes a duty both to his client and to the court. Counsel shall assist the military judge in maintaining throughout the trial a quiet and dignified atmosphere in keeping with the highest traditions of judicial proceedings in the military services. All counsel are responsible for knowing and observing the proper relationship and decorum that must exist between themselves and the military judge.

Rule 10. Unless otherwise authorized or directed by the military judge, counsel shall stand when addressing the military judge or court members.

Rule 11. While the accused is present or the court is in session, counsel should refrain from any familiarity among themselves or with the military judge, members of the court or witnesses. Direct colloquy, argument or hostility between counsel serves no proper purpose in the trial and shall not be permitted.

Rule 12. Counsel should conduct the questioning of witnesses and arguments to the court at a reasonable distance from the witness or court. At the discretion of the military judge, counsel may be required to question witnesses and present arguments from a lectern, the counsel table, or other prescribed place. Except to present an exhibit, counsel should not approach a witness without asking permission of the military judge; nor should he position himself so as to block the view between witnesses and the other participants in the trial.

Rule 13. During argument of counsel, opposing counsel shall remain seated at the counsel table. Counsel shall not walk about, talk to others, or otherwise conduct himself so as to divert the attention of the court or any member.

Rule 14. Except with the permission of the military judge, only one counsel for each side (or, if there are multiple accused, one counsel for each accused) may examine any one witness or address the court on any particular issue or motion.

Rule 15. When counsel initially enters an objection, he shall state only the objection and the basis for it. Before proceeding to argue an objection, counsel will request permission of the military judge and ascertain whether argument will be entertained in open or in an out-of-court session. Although argument identifying legal issues and presenting authorities is ordinarily appropriate, an objection or argument for the purpose of making a speech, recapitulating testimony, or attempting to guide a witness is prohibited.

Rule 16. After the military judge has announced his decision on an objection, counsel shall not make further comment or argument except with the express permission of the military judge.

Rule 17. All requests for rereading of questions or answers shall be addressed to the military judge.

Rule 18. The military judge may initiate the voir dire examination by referring to the charge against the accused and putting to the members' questions touching upon their qualifications, including impartiality, to serve as members of the court. The military judge shall permit such additional questions, oral or written, as he deems reasonable and proper.

Rule 19. Counsel shall confine their opening statements to what they expect the evidence to prove. Counsel will not use the opening statement to argue the case or to instruct as to the law.

Rule 20. In closing argument, counsel may make reasonable comment on the evidence and may draw such inferences from the evidence as will support his theory of the case, but he shall not assert his personal belief in the justice of his cause or in the guilt or innocence of the accused; nor may he personally vouch for the credibility or lack of credibility of witnesses.

3. Witnesses

Rule 21. All witnesses will be treated with fairness and consideration; they will not be unnecessarily crowded, shouted at, ridiculed, humiliated, or otherwise abused.

Rule 22. A military witness should not salute the military judge or the president of the court. In a trial by members, the accused will salute and report to the president when he stands to receive the findings or sentence. Counsel should insure that witnesses they present understand the physical setup of the courtroom, where they should go, and what they should do.

Rule 23. The court will cooperate with commanders, senior staff officers, doctors and other professional witnesses and may accommodate them by permitting them to appear and testify out of order. Counsel should discuss such arrangements in advance with opposing counsel and the military judge.

Rule 24. Each counsel should make arrangements before each session to insure that his witnesses will be immediately available when called.

4. Exhibits

Rule 25. Exhibits intended to be used or introduced at trial should be marked "For Identification" prior to trial. Prosecution exhibits will be marked consecutively with Arabic numerals and defense exhibits with capital letters. When referring to an exhibit while questioning a witness or addressing the court, counsel shall specify the exhibit number or letter.

Rule 26. Counsel tendering an exhibit shall have sufficient copies made for the military judge and all opposing counsel. Proposed prosecution exhibits should be shown to the defense counsel before trial. Defense counsel may do likewise, but are not required to do so.

Rule 27. If an item of evidence cannot be included in the record of trial for any reason, counsel offering it should arrange to have a suitable substitute provided. Such a substitute shall include an accurate and detailed description, either pictorially or written, as to the exhibit's size, shape, weight, substance, color, and other relevant physical characteristics.

Rule 28. If a copy of a document is to be substituted in the record of trial for a document that was offered into evidence, only a permanent type copy may be used.

5. Support Trial Personnel

Rule 29. A bailiff should be present at every trial to announce the opening and closing of the court, to obtain witnesses as they are called to testify, to ask everyone to rise when the military judge enters or leaves the courtroom, and to take care of administrative errands during the trial. The trial counsel is responsible for briefing the bailiff as to his duties. If a bailiff is not present, the trial counsel or an assistant will perform the bailiff's duties.

Rule 30. Unless otherwise directed by the military judge, guards, if necessary, shall not be permitted inside the bar of the courtroom.

6. Docketing and Other Procedural Matters

Rule 31. Each military judge should maintain his calendar in a manner which will make efficient use of available time and provide for expeditious scheduling

of trials when requested by the commands which he services.

Rule 32. When a number of uncontested cases are pending in a single area, such cases should be consolidated for trial at a continuous session of the court.

Rule 33. When a military judge is named to a case, the trial counsel will advise the military judge of the general nature of the charges. As preparation for the trial continues, he will keep the judge informed of the estimated duration of the trial, whether it will be by judge alone, and whether it will be contested. Counsel for both sides shall prepare for trial as expeditiously as possible and will arrange with the military judge for a firm trial date. Alternatively, in areas where the caseload justifies doing so, the military judge may schedule periodic pretrial sessions to conduct arraignments, enter pleas, hear motions, and set dates for future hearings and trials.

Rule 34. Counsel shall be prepared to dispose of all motions at one LCMJ Article 39(a) session. As soon as practicable after being detailed to serve, a defense counsel who wishes to present motions or other pleadings will prepare and furnish to the trial counsel, copy to the military judge, a Motions and Hearings Checklist, in substantially the form shown at the end of these rules, accompanied by the motions or other pleadings presented. He will indicate thereon those issues he wishes to litigate at a LCMJ Article 39(a) session, specifying whether the hearing will involve argument only, or also presentation of evidence. As soon as counsels have determined that a preliminary hearing is necessary, they will arrange a hearing date with the military judge. Motions or other pleadings which are required to be considered at a preliminary hearing which are not presented in accordance with this rule will not be entertained at a preliminary hearing or during trial except for good cause shown and with permission of the military judge. If the convening authority can provide the relief sought by counsel, thus making a preliminary hearing unnecessary, a timely application therefore should be made to him. Only those matters which are contested by the parties or which are not fully satisfied by the trial counsel or convening authority will be scheduled for preliminary hearing.

Rule 35. If defense counsel anticipates moving for dismissal of any charge on the basis that the accused has been denied his right to a speedy trial, counsel for both sides should endeavor, prior to trial, to enter into and prepare a stipulation of fact as to the chronology of events. In any case in which trial counsel anticipates that defense counsel may raise an issue of denial of speedy trial, trial counsel shall prepare a chronology of events in the case, even if defense counsel is not willing to stipulate to such facts. In such case, trial counsel should also be prepared to present evidence to prove the pre-trial events. If a motion or other issue involves only a dispute between the parties as to an issue of law or ultimate question of fact, and not as to the underlying facts, counsel should endeavor to enter into and prepare, prior to trial, a stipulation of fact or a stipulation of expected testimony covering those matters. Counsel may enter into such a stipulation for the limited purpose of obtaining a ruling on a motion or other pleading.

Rule 36. In a trial with members, if either counsel desires any specialized instructions, including any summarization of the evidence or any instructions not

contained in appropriate service publications (for example, as are contained in the Military Judge's Benchbook, DA Pam 27-9), he should submit such instructions to the military judge in writing prior to commencement of the Section 39(a) instructions conference. If either counsel desires a modification of a standard instruction from appropriate service publications, he should also submit his proposed modification in writing prior to commencement of the Section 39(a) instructions conference.

Rule 37. The military judge may enter special findings even though not requested to do so by counsel for either side. Such findings should not merely repeat what is available elsewhere in the record of trial, but should be limited to those special findings of fact and conclusions of law which were made by the military judge as the basis for his general findings of guilt or innocence or his disposition of important motions. If counsel for either side desires special findings, he should not only make a request therefore, but he should also submit proposed special findings to the military judge in writing, including when appropriate citations of legal authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2397 (November 2009).

§603. Article 39(a) Sessions/Conferences

A. General. An "LCMJ Article 39(a) Session" empowers the military judge to call the court-martial into session for consideration of any matters not requiring the presence of court members. It applies to both pre-trial and post-trial issues.

B. Purposes. The following illustrative general purposes may prompt an Article 39(a) Session:

1. Hearing and determining motions raising defenses or objections that are capable of determination without trial of the issues raised by a plea of not guilty.

2. Hearing and ruling upon any of the following matters under the LCMJ even though the matter may be appropriate for later consideration by the members:

- a. unlawful command influence [See LCMJ Article 37];
- b. verification and qualification of counsel [See LCMJ Article 38];
- c. continuances [See LCMJ Article 40];
- d. challenges or disqualification of counsel [See LCMJ Article 41];
- e. statute of limitations [See LCMJ Article 43];
- f. former jeopardy [See LCMJ Article 44];
- g. correction or reconsideration of pleas [See LCMJ Article 45];
- h. issuing process for witnesses or evidence [See LCMJ Article 46];
- i. contempt [See LCMJ Article 48];
- j. authorizing depositions [See LCMJ Article 49.];
- k. holding arraignments and receiving pleas of the accused and entry of findings of guilt thereupon.

1. performing any other procedural function of the military judge not requiring the presence of the court members, to include, particularly, resolution of questions of trial procedure, the accused's choice of counsel and forum, admissibility of evidence, and motions for appropriate relief. [See, R.C.M. 803 discussion.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2399 (November 2009).

§604. Arraignment

A. The arraignment normally occurs during an Article 39(a) session. [See R.C.M. 904.] In the arraignment, the trial counsel informs the accused of the specific charges and the military judge asks the accused how he desires to plead. The accused may waive reading of the charges and specifications. The plea itself is not part of the arraignment. The accused may be validly arraigned only on charges and amendments thereto which have been properly referred to the arraigning court-martial for trial. After arraignment, no additional charges may be referred to the same trial without the consent of the accused.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2399 (November 2009).

§605. Motions

A. General. A motion is a request to the military judge for some particular relief, as set forth in R.C.M. 905- 907. Motions may be oral, or in the discretion of the military judge, in writing. Motion practice is primarily the province of the defense counsel.

B. Kinds of Motions. The three functional kinds of motions are "motions to dismiss," "motions for appropriate relief" and "motions to suppress." Another kind of motion similar to a motion to suppress is a motion in limine.

1. A Motion to Dismiss is a request to terminate further proceedings as to one or more charges and specifications on grounds capable of determination without trial of the general issue of guilt. Grounds, which include both "waivable" and "nonwaivable" bases, include statute of limitations, speedy trial, former jeopardy, pardon, immunity, constructive condonation of desertion, and prior punishment under LCMJ Articles 13 or 15 for the same offense, if it is a "minor offense." "Nonwaivable" grounds include lack of jurisdiction and failure of a specification to state an offense. "Waivable" grounds for motion to dismiss must be made before final adjournment of the court-martial.

2. A Motion for Appropriate Relief is designed to remedy defects of form or substance that require corrective action short of dismissal. It is made to cure a defect which impedes the party from properly preparing for trial or conducting his case. R.C.M. 906(a) lists 14 non-exclusive, different grounds for the motion for appropriate relief.

3. A Motion to Suppress may be directed to a confession or admission by an accused, evidence obtained from a search or seizure or believed to belong to the accused, and/or prior eyewitness identification of the accused. Once properly notified by trial counsel that such evidence exists, the accused must ordinarily make the motion to suppress the evidence before entering pleas. Absent good cause, the military judge must conduct a hearing and make a ruling on a motion to suppress before requiring entry of a plea.

4. A Motion in Limine is similar to a motion to suppress in that it requests a preliminary ruling on admissibility of evidence which must be ruled on prior to the

offering of the matter into evidence. The motion may be made by either side before or during trial.

C. Burden/Standard of Proof. The general rule is that where factual matters must be resolved in order to decide a motion, the burden of persuasion is generally upon the moving party, who must prove the matter by a "preponderance of evidence" (unless another standard, such as "clear and convincing evidence" is specifically required.) [See, e.g., Mil R. Evid. 313(b), regarding examination to locate weapon/contraband.]

1. Motion to Dismiss. Exception to general rule above applies to Motions based on lack of jurisdiction, denial of speedy trial, or running of statute of limitations, all of which place the burden on the government.

2. Motion for Appropriate Relief. The general rule placing the burden on the moving party by a "preponderance of evidence" applies.

3. Motion to Suppress. Exception to the general rule above in that the prosecution has the burden of demonstrating by a "preponderance of the evidence" (unless a different standard is specifically prescribed) that the offered evidence is properly admissible. [See M.R.E.. 311(e), 321(d).]

4. Motion in Limine. The burden of proof is on the proponent of the evidence.

D. Time for Filing. The general rule is that any defense, objection, or request which is capable of determination without the trial of the general issue of guilt may be raised before trial. The following motions must be raised before a plea is entered:

1. defenses or objections based on defects (other than jurisdictional defects) in the preferral, forwarding, investigation, or referral of charges (e.g. unsworn charges, inadequate Article 32 investigation, and inadequate pretrial advice.) [See R.C.M. 307, 401-7, 601-4, 905(b)(Discussion).];

2. defenses or objections based on defects in the charges and specifications (other than failure to show jurisdiction or to charge an offense, which objections shall be resolved by the military judge at any time during the pendency of the proceedings.);

3. motions to suppress admissibility of confessions, admissions, evidence obtained from unlawful searches and seizures, and eyewitness identification. [See M.R.E.. 304, 311, 321.] Challenges to admissibility of evidence on other grounds may be raised by objection at trial or by motion in limine;

4. motions for discovery under R.C.M. 701 or for production of witnesses or evidence;

5. motions for severance of charges or accused;

6. objections based on denial of request for individual military counsel or for retention of detailed defense counsel when individual military counsel has been granted.

E. Military Judge's Essential Findings. When factual issues are involved in determining a motion, the military judge is obliged to state his essential findings on the record. Such findings should contain a statement of the factual findings and essential legal findings which support the decision on the motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2399 (November 2009).

§606. Pleas

A. Types of Pleas and Their Effect

1. Not Guilty Plea. Such a plea places all matters in issue and requires the prosecution to prove the accused's guilt beyond a reasonable doubt. If an accused fails or refuses to plead, or makes an irregular plea, the military judge shall enter a plea of not guilty for the accused.

2. Guilty Plea. A plea of guilty, if accepted by the military judge, admits the accused's guilt and relieves the prosecution of the burden of proving guilt beyond all reasonable doubt. Before the plea is accepted, the accused must admit every essential element of the offense. [See R.C.M. 910(E) discussion.] The military judge must make a searching and detailed inquiry of the accused to determine if the accused understands the plea, that it is entered into voluntarily, and that the accused, is, in fact guilty. [See R.C.M. 910(c).]

3. Guilty by Exceptions or Guilty with Exceptions and Substitutions. These types of pleas "except out" certain language from the charged specification and/or substitutes words in the specification, thereby entering a plea to an offense included in the offense charged. The result is to plead not guilty to the charged offense but guilty to a different, and often lesser included offense. For example, if the charged offense were robbery and the guilty plea by exceptions and substitutions was to the lesser included offense of wrongful appropriation, the defense counsel would state:

4. "Your honor, the accused, _____, pleads to the specification: guilty, except the words, 'by means of force and violence steal from the person of _____ against his will,' substituting therefore the words 'wrongfully appropriate,' to the excepted words not guilty, to the substituted words guilty to the charge, not guilty, but guilty of a violation of Article 121."

5. A plea of guilty to a lesser included offense does not bar the prosecution from proceeding of the offense as charged and the prosecution need not prove the elements of the lesser offense admitted in the plea. The military judge must make a guilty plea inquiry into the plea of guilty by exceptions and substitutions.

6. Mixed Pleas. An accused may enter plea(s) of guilty to some specifications, guilty by exceptions and substitutions to others, and/or not guilty to other specifications. After a guilty plea inquiry and acceptance by the military judge of any guilty pleas, the prosecution may attempt to prove the remaining offenses. If the accused pleads guilty to some but not all of the specifications, the accused's admission of an element in one specification does not relieve the Government from the burden of proving the same element in the remaining, contested specifications. Thus, admissions implicit in a guilty plea to one offense cannot be used as evidence to support the findings of guilty of an essential element of a separate and different offense.

7. Conditional Pleas. With the approval of the military judge and the consent of the government, an accused may enter a conditional plea of guilty, reserving in writing the right, on further review or appeal, to review of the adverse

determination of any specified pretrial motion. The specified grounds preserved for appeal must be actually litigated at the trial court level. If the accused prevails on further review or appeal, he is allowed to withdraw the guilty plea. The conditional plea enables the accused to preserve his appeal and also saves the government the time and expense of a trial on the merits. Conditional pleas are not normally granted unless the motion is capable of full pretrial litigation. When the pretrial motion requires trial on the merits for a full development of the underlying factual issues or the motion is not "case dispositive," the conditional plea is normally denied.

B. Guilty Plea Inquiry. The guilty plea or "providence inquiry" is a dialogue between the military judge and the accused. It is made on the record to assure the military judge that the accused personally understands the meaning and effect of his plea and that an adequate factual basis exists for acceptance of an admission of guilt. The components of the guilty plea inquiry, listed in RCM 910(c) are:

1. The nature of the offense to which the plea is offered, the maximum possible penalty and any mandatory minimum penalty.

2. The right to representation by counsel.

3. The rights to confrontation and cross-examination of one's accusers, right against compulsory self-incrimination, right to trial of the facts by court-martial.

4. The factual basis for the plea.

5. The plea agreement inquiry.

C. Refusal to Accept Guilty Plea. The military judge will refuse to accept an accused's plea of guilty and enter a not guilty plea in the following situations:

1. The accused enters an "irregular" plea, such as a plea of guilty while denying criminality, or "guilty but insane," or "guilty to the charge but not guilty to the specification," or "nolo contendere".

2. There are substantial, irreconcilable inconsistencies between the plea and statements of the accused or the evidence. The military judge shall make inquiry to negate any defenses raised by the accused, and may call witnesses to resolve any such potential defense.

3. The accused enters an "improvident" plea (i.e. without understanding its meaning)

4. The accused refuses to enter a plea.

D. Withdrawal of Guilty Plea. Prior to acceptance of a guilty plea by the military judge, the accused has an absolute right to withdraw a guilty plea and enter a plea of not guilty or guilty to a lesser included offense. After acceptance of the plea, but before the sentence is announced, an accused can request permission from the military judge to withdraw a guilty plea. The military judge should ordinarily grant such a request if it is shown that the guilty plea was induced by fraud, mistake, imposition, misrepresentation, or misapprehension of the accused of his legal rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2400 (November 2009).

§607. Former Jeopardy, Mistrial, and Withdrawal

A. Former Jeopardy. A proceeding terminated by the government after evidence is introduced on the merits, without fault of the accused, is a trial. No person may, without his consent, be tried a second time for the same

offense. Former jeopardy does not apply to offenses under civilian law, but the authority to try an accused for the same acts which constitute an offense under the LCMJ may be limited by regulation. [See LCMJ Article 44a and R.C.M. 907(b)(C).]

B. Mistrial. A declaration of mistrial may be ordered by the military judge when such action is manifestly necessary in the interest of justice to prevent unfairness. Mistrial is a drastic remedy and should be employed only when manifestly necessary to preserve the ends of justice. For instance, an error in admitting evidence can ordinarily be cured by striking the testimony or evidence and/or by a curative instruction to disregard. A mistrial may be granted either as to findings of some or all charges or only as to the sentence. The military judge shall inquire into the views of the parties prior to such declaration. A declaration of mistrial shall not prevent trial by another court-martial on the affected charges and specifications except when the mistrial was declared after jeopardy attached and before findings, and the declaration was an abuse of discretion and without the consent of the accused and/or the direct result of intentional prosecutorial misconduct designed to necessitate a mistrial. [See R.C.M. 915(a)-(c).]

C. Withdrawal of Charges. The convening authority or a superior competent authority may, for any reason, cause any charges or specifications to be withdrawn from a court-martial at any time before findings are announced. Charges that have been withdrawn from a court-martial may be referred to another court-martial unless the withdrawal was for an improper reason. Charges withdrawn after the introduction of evidence on the general issue of guilt may be referred to another court-martial only if the withdrawal was necessitated by urgent and unforeseen military necessity. Withdrawal before trial proceedings begin carries the presumption of regularity; however the reason for withdrawal should be made part of the record. [See R.C.M. 604.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2401 (November 2009).

§608. Contempt

A. Any level of court-martial has the power to punish for contempt "...any person who uses any menacing word sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder." The punishment for such conduct may not exceed confinement for 30 days or a fine of one hundred dollars (\$100) or both. The convening authority approves or disapproves all or part of the sentence, with no further review or appeal. Any confinement will begin when adjudged unless it is deferred, suspended, or disapproved by the convening authority. Any fine adjudged does not become effective until ordered executory by the convening authority. [See LCMJ Article 48 and R.C.M. 809.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2401 (November 2009).

§609. Witnesses

A. During the case in chief, the counsel and court may call witnesses to testify. The party calling the witness

conducts direct examination followed by cross-examination of the witness by the opposing party. Redirect and recross-examination are conducted as necessary, followed by any questioning by the military judge and members. The military judge has the discretion to limit the number of redirect and recross-examinations. [See R.C.M. 913 and M.R.E. 611 and 614.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2401 (November 2009).

§610. Stipulations

A. General. A "stipulation" is an agreement between the parties. There are two common types of stipulations, "stipulation of fact" and "stipulation of expected testimony." Stipulations may be made orally or in writing. The military judge rules on the admissibility of the stipulation, and should ordinarily inquire to insure that the accused understands the right not to stipulate, understands the stipulation, and consents to it. [See R.C.M. 811.]

B. Stipulation of Fact. The parties may stipulate that a certain fact exists or does not exist. Once accepted, a stipulation of fact, in whatever form, is binding on the court-martial and may not be contradicted by the parties.

C. Stipulation of Expected Testimony. The parties may also stipulate that, if a witness were present, he would testify in a specified manner or that, if an original document were introduced, the document's contents would include certain information. Unlike a stipulation of fact, the parties are free to contradict, attack, or explain the evidence presented in this manner.

D. "Confessional Stipulation". The accused may, after a plea of not guilty, enter into a stipulation that amounts to a confession. Such a stipulation is subject to the same constraint as a guilty plea, and the military judge must ascertain that:

1. the accused understands the right not to so stipulate;
2. the stipulation will not be accepted without the accused's consent;
3. the accused understands the contents and effect of the stipulation;
4. the accused, after consulting with counsel, consents to the stipulation; and
5. whether there are any agreements between the parties in connection with the stipulation, and, if so, the terms thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2402 (November 2009).

§611. Withdrawal of Stipulations

A. A party may withdraw from an agreement to stipulate or from a stipulation at any time before the stipulation is accepted. After a stipulation has been accepted by the military judge, he may permit withdrawal. If a party withdraws from an agreement to stipulate or from a stipulation, the opposing party may be entitled to a continuance to obtain proof of the matters which were to

have been stipulated. If there is withdrawal of a stipulation previously accepted, the stipulation must be disregarded by the court-martial, and an instruction to that effect should be given.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2402 (November 2009).

§612. Motion for Finding of Not Guilty

A. General. A motion for finding of not guilty is a procedural device whereby the defense may test the sufficiency of the government's case. The motion may also be raised sua sponte by the military judge. The motion may be made at the conclusion of the government's case or at the conclusion of the defense's case, but must be made before the announcement of the findings on the general issue of guilt. The motion must specifically indicate where the government's evidence is insufficient and the military judge should give the parties an opportunity to be heard before ruling on the motion. The military judge should ordinarily allow the trial counsel to reopen the government's case as to the insufficiency specified in the motion if any such further evidence is reasonably available. [See R.C.M. 917.]

B. Test and Effect of Ruling. The test for granting the motion is whether there is some evidence, which together with all reasonable inferences and applicable presumptions, could reasonably tend to establish every essential element of the offense charged. The evidence is viewed in the light most favorable to the government and without evaluating the credibility of witnesses. The military judge may grant the motion as to part of a specification, as long as a lesser offense charged is alleged in the portion of the specification as to which the motion is not granted. A ruling granting a motion for a finding of not guilty is an acquittal and is final when announced; it may not be reconsidered by the military judge. A ruling which denies a motion for finding of not guilty may be reconsidered at any time prior to announcement of findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2402 (November 2009).

§613. Views and Inspections

A. In extraordinary circumstances, the military judge may, as a matter of discretion, permit the court-martial to view or inspect the premises or a place, or an article, or object. Such a view or inspection shall take place only in the presence of all parties, the members (if any) and the military judge. A person familiar with the scene may be designated by the military judge to escort the court-martial. Such a person shall perform the duties of escort under oath. The escort shall not testify, but may point out particular features prescribed by the military judge. Any statement made at the view or inspection by an escort, party, military judge, or any member shall be made part of the record. The fact that a view or inspection has been made does not necessarily preclude the introduction in evidence of photographs, diagrams, maps, or sketches of the place or item viewed, if these are otherwise admissible. [See R.C.M. 913(c).]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2402 (November 2009).

§614. Arguments

A. Types of Arguments

1. Opening Statements. The trial counsel may make an opening statement immediately before presenting the case in chief, and defense counsel may make an opening statement either after trial counsel or after the prosecution has rested its case. [See R.C.M. 913(b).]

2. Motions. Before action is taken on a contested motion, each side has the opportunity to present evidence and make an argument. The military judge, in his discretion, may limit or refuse to hear arguments which are trivial, mere repetition, or designed as a delay tactic. [See R.C.M. 905(h).]

3. Evidentiary objections and any others questions or matters presented to the Court for decision during the course of the court-martial.

4. Closing Arguments on Findings [R.C.M. 919] and Sentencings [R.C.M. 1001(g).]

B. Permissible Argument

1. Counsel may make reasonable comment on the evidence and may draw such inferences from the evidence as will support his theory of the case. [R.C.M. 919(b).]

2. Counsel may comment on the testimony, conduct, motives, and evidence of malice of the witnesses.

3. Counsel may argue as though the testimony of his witnesses conclusively established the facts related by them. Comments may be direct and forceful so long as they are fair and not unfairly prejudicial.

4. Counsel may argue that deterrence of others should be considered in adjudging a sentence, but may not argue this to the exclusion of all other sentencing factors.

5. Counsel may argue for the maximum sentence, or may argue for a specific sentence which is less than the maximum authorized by law.

6. Both trial and defense counsel may properly argue for a sentence they know cannot be approved as a result of a pretrial agreement.

C. Impermissible Argument

1. Facts that are not properly before the court as evidence or have no foundation in the record. However, it is permissible to argue the ordinary experience of mankind, facts of contemporary history, and other matters which are common knowledge.

2. Misstatement of facts which are in evidence.

3. Personal belief of counsel.

4. Comment on the accused's failure to testify. Trial counsel may not characterize the evidence as "uncontroverted," where the accused is the only person who could have contradicted that evidence. However, trial counsel may properly review the available evidence and note that the trier of fact must decide the case based on the evidence presented.

5. Comment on effect of outcome of the case on "civilian-military" relations.

6. Placing court members in shoes of victim or victims' relatives.

7. Implication that a particular sentence is the view of the convening authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2403 (November 2009).

§615. Objections to Impermissible Argument

A. It is not necessary for counsel to interrupt opposing counsel's argument in order to preserve an assignment of errors. An error is preserved for appeal so long as the objection is made before the military judge begins his instructions to members or, if none, renders his verdict.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2403 (November 2009).

§616. Sentence

A. General. When the court returns a finding of not guilty, the accused is acquitted and the proceedings terminate. When the court returns a finding of guilty, the court-martial proceeds to the sentencing phase. During the sentencing phase, the trial counsel has the first opportunity to present the "case in aggravation." Then the defense counsel has an opportunity to present a "case in extenuation and mitigation." Thereafter, counsel for both sides present their case in rebuttal and surrebuttal as appropriate. At the conclusion of the evidence and counsel arguments, the military judge announces the sentence (or, in a case with members, instructs members who then deliberate, vote, and announce their sentence).

B. The Case in Aggravation. The trial counsel's case in aggravation consists of matters which the sentencing authority may consider in arriving at an appropriate sentence. These matters can be presented by the trial counsel, and can be considered by the sentencing authority, regardless of what defense counsel decides to present during the case in extenuation and mitigation. The government's right to present presentencing evidence is the same in a contested case as it is in a guilty plea case. The M.R.E. are not relaxed for the government during the case in aggravation, which necessitates that data must be properly authenticated and satisfy the requirements regarding hearsay testimony, if applicable. The case in aggravation consists of five enumerated categories of information:

1. Service data relating to the accused taken from the charge sheet concerning the accused's pay, time in service, and prior restraint. This information should be verified for accuracy with defense counsel. This may be read orally into the record. [See R.C.M. 1001(b).]

2. Previous convictions, military or civilian. Unless stipulated, documentary evidence used to prove a conviction must be properly authenticated. Courts-martial result in a "conviction" once sentence is adjudged in the case. To determine whether a civilian adjudication has resulted in a criminal conviction, refer to the law of the civilian jurisdiction where the proceeding took place. A juvenile adjudication is not a conviction for these purposes. The conviction must antedate the commencement of the presentencing proceeding in which it is offered; however,

with the exception of SCM convictions, there is no requirement that the conviction be "final" to be admissible. [See R.C.M. 1001(b)(A).]

3. Personal data and character of prior service of the accused. Trial counsel may present to the military judge copies of any personnel records that reflect the past military efficiency, conduct, performance, and history of the accused, prepared and maintained according to departmental regulations. [See R.C.M. 1001(b).]

4. Matters in aggravation. The trial counsel may present evidence directly related to the circumstances surrounding the offense and evidence concerning the repercussions of the offense. It must be in a form admissible under the M.R.E. (e.g. relevant, non hearsay, properly authenticated, etc.) and must satisfy the balancing test of M.R.E. 403 (i.e. probative value outweighs prejudicial effect). [See R.C.M. 1001(b).]

5. Opinion evidence of rehabilitative potential and past duty performance. Any opinion testimony should be based on personal observation, but may also be based on reports and other information provided by subordinates. The government cannot use this as an opportunity to influence the court to punish the accused by imposing a punitive discharge. Also, the trial counsel cannot explore specific incidents of misconduct during direct examination, but if defense counsel "opens the door" by inquiring specific instances of conduct during cross-examination, redirect examination on that subject is appropriate. The military judge has broad discretion in limiting collateral inquiries into specific instances of conduct.

C. The Case in Extenuation and Mitigation. Matters in extenuation are those matters which serve to explain the circumstances surrounding the commission of an offense. Mitigation evidence relates to the accused's character and those aspects or the individual which indicate that sentence leniency is warranted. [See R.C.M. 1001(c).] The rules of evidence are generally relaxed for the defense presentation of the case in extenuation and mitigation. The military judge has discretion in relaxing the rules of evidence, but should not admit any evidence that is irrelevant or has no indicia of reliability. The military judge should personally advise the accused of the right to present matters in extenuation and mitigation including the rights of allocution. [See R.C.M. 1001(a).] The accused may make a sworn statement, an unsworn statement, both, or remain silent. If the accused makes a sworn statement he may be cross-examined. His unsworn statement is not subject to cross-examination, but may be rebutted by the government by independent evidence.

D. Other Factors Which May Be Considered on Sentencing.

1. Plea of Guilty. It is appropriate to consider that a guilty plea usually saves the government time, effort, and expense.

2. Time Spent in Pretrial Confinement. The accused is entitled to credit for time served in pretrial confinement. [See R.C.M. 305(k).]

3. The Accused's False Testimony on the Merits. The court-martial may consider the accused's mendacity as bearing on rehabilitative potential during sentencing if it concludes that the accused willfully lied about a material matter.

4. The Accused's Absence from Trial. If the accused is tried in absentia, the sentencing authority may consider the accused voluntary absence as an indication of rehabilitative potential.

5. Administrative Consequences of a Sentence. Command policies and directives regarding the disposition of offenders or directives impacting on the military corrections system are not appropriate sentencing factors, however, the sentencing authority may consider that a punitive discharge deprives an individual of substantially all benefits administered by the Department of Veterans' Affairs.

6. Purposes of Sentencing. The sentencing authority must consider that the principal reasons for adjudging a sentence are:

- a. protection of society from the wrongdoer;
- b. punishment of the wrongdoer;
- c. rehabilitation of the wrongdoer;
- d. preservation of good order and discipline in the military; and,
- e. deterrence of the wrongdoer and those who know of his crime and sentence from committing the same or similar offenses.

E. Permissible Punishments by Courts-Martial. See Figure 6-2.

F. Reconsideration of Sentence. The sentencing authority may reconsider a sentence with a view towards decreasing it anytime before the record of trial is authenticated. [R.C.M. 1009(b).]

G. Defective or Illegal Sentence. After sentence is announced, the military judge can seek a clarification of the ambiguity or illegality of a sentence any time prior to adjournment. [R.C.M. 1009(c)(B).] After the case is adjourned, the military judge may initiate a reconsideration proceeding but only with a view to clarifying or decreasing the sentence; the convening authority can order a proceeding to seek clarification; or the convening authority can approve the lowest legal, unambiguous sentence adjudged. [R.C.M. 1009(c).]

H. Suspension of Sentences. The military judge, summary court martial officer, or the convening authority may suspend execution of any sentence. [LCMJ Article 71(B).] No penalty or sentence may be suspended beyond a reasonable period. The suspension period cannot extend beyond the expiration of an enlisted accused's present term of service, and is subject to the following maximum periods:

1. 12 months for a SCM;
2. 18 months for a SPCM;
3. 24 months for a GCM.

I. Sample Notice of Court-Martial (Accused) (Figure 6-1)

[UNIT HEADING]

LANG-BDE-SJA DATE

MEMORANDUM FOR: SPC JOHN DOE, 400-00-0000, 1234 Elm Street, Anywhere, LA 70000

SUBJECT: Notice of Court-Martial

You are hereby furnished a copy of the charge sheet for which a Special Court-Martial was ordered on this date.

You are directed to appear at the Special Court-Martial entitled STATE OF LOUISIANA versus SPC JOHN DOE to be conducted at 1000 hours, 21 Sep 91, in the 199th Support Battalion Armory located at Alexandria, Louisiana. You are ordered to appear at 0800 on that date in Class A uniform. FAILURE TO APPEAR WILL RESULT IN ISSUANCE OF A BENCH WARRANT FOR YOUR ARREST.

CPT HUNT DOWNER has been appointed as your military defense counsel and will be present at your court-martial. It is your responsibility to contact CPT DOWNER as soon as possible during normal business hours at (504) 876-5432. You have a right to retain civilian counsel of your own choosing and at your own expense if you so elect. If you intend to be represented by a civilian counsel, you should make arrangements to have that attorney present with you at the court-martial. CPT DOWNER will be present to assist you regardless of your decision concerning hiring civilian counsel.

If you have witnesses in your defense, you must immediately provide the full name(s), home and work address(es) to your defense counsel so that subpoenas may issue. Your failure to take immediate action in this regard will not be grounds for a postponement of your Court-Martial. It will not be necessary for your witnesses to appear in Class A uniform.

Any questions concerning the content of this notice may be directed to the undersigned at (318) 765-4321.

GLENN GREMILLION
CPT, JA
Trial Counsel

CF: Military Judge
Staff Judge Advocate, 256th Bde
Defense Counsel
Office of the State Judge Advocate
S-1, 199th Support Battalion

NOTE: This Notice, which may be tailored to meet existing conditions and requirements, should be hand-delivered or, if that is not possible, mailed CERTIFIED MAIL, RETURN RECEIPT REQUESTED

J. Court Martial Maximum Punishment Table (Figure 6/2)

1. This table reflects recent changes in Louisiana law that became effective on 1 JUL 07.

General Court-Martial (LCMJ Article 18)

A fine of not more than one thousand dollars (\$1,000.00);
Forfeiture of pay and allowances;
A reprimand;
Dismissal, bad conduct, or dishonorable discharge;
Reduction of a noncommissioned officer to the ranks;
Confinement of not more than two years; or
Any combination of these punishments.

Special Court-Martial (LCMJ Article 19)

A fine of not more than \$200;
Forfeiture of pay and allowances;
A reprimand;
Bad conduct discharge or dishonorable discharge;
Reduction of a noncommissioned officer to the ranks;
Confinement of not more than 12 months;
Any combination of these punishments.

Summary Court-Martial (LCMJ Article 20)

Confinement of not more than one week;
Reduction of enlisted personnel to the lowest grade;
A fine of not more than one hundred dollars (\$100.00);
Forfeiture of up to one month pay and allowances;
A reprimand; or
Any combination of these punishments.

K. Sample Notice of Court-Martial (Participants) (Figure 6-3)

[UNIT HEADING]

LANG-BDE-SJA

DATE

MEMORANDUM FOR: CPT Courageous, 123 Main Street, Houma, LA 70360

SUBJECT: Notice of Court-Martial

A Special Court-Martial entitled STATE OF LOUISIANA versus SPC JOHN DOE to be conducted at 1000 hours, 21 Sep 2008, in the 199th Support Battalion Armory located at Alexandria, Louisiana. A copy of the Charge Sheet and allied documents are attached.

You have been appointed as defense counsel for SPC DOE by the Commander, Headquarters, 256th Infantry Brigade (M), by Convening Order Number 08-1, dated 12 January, 2008. You are ordered to report on said date at 0800 hours to perform such duty as the Court-Martial may direct. The uniform of the day is Class A.

Witness subpoena information (full names, home and work addresses) should be telephonically furnished to the undersigned as soon as possible, but in no case less than 20 days before the scheduled Court-Martial.

Any questions concerning the content of this notice may be directed to the undersigned at (318) 765-4321.

GLENN GREMILLION
CPT, JA, LANG
Trial Counsel

CF: Military Judge
Staff Judge Advocate, 256th Bde
Office of the State Judge Advocate
S-1, 199th Support Battalion

[NOTE: The contents of this letter may be revised as necessary for other Court-Martial participants.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2403 (November 2009).

Chapter 7. Post-Trial Procedures

§701. Report of Result of Trial

A. After final adjournment of the court-martial in a case, the trial counsel shall promptly notify the accused's immediate commander, the convening authority or the convening authority's designee, and, if appropriate, the officer in charge of the confinement facility, of the findings and sentence. R.C.M. 1101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2406 (November 2009).

§702. Deferral of Sentences to Confinement

A. Sentences to confinement are deferred until the sentence has been approved and ordered executed by the convening authority unless he denies deferral of confinement in writing. Denial of deferral of confinement should ordinarily be accomplished prior to announcement of sentence; however, the convening authority may, for cause deemed good and sufficient by him, deny deferral and order the accused into confinement after announcement of

sentence and before he approves the sentence and orders it executed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2406 (November 2009).

§703. Preparation of Record of Trial

A. Each general, special, and summary court-martial shall keep a separate record of the proceedings in each case brought before it. The record of each general and special court-martial shall include a verbatim written transcript of all sessions except sessions closed for deliberations and voting when confinement, forfeitures of pay, or a punitive discharge has been adjudged. When a verbatim transcript is not required under this Paragraph, a summarized report of the court-martial proceedings may be prepared instead of a verbatim transcript. The Record of Trial will be properly prepared Trial Counsel. A copy of the complete Record of Trial will be forwarded to the convening authority. The original Record of Trial will be forwarded to and maintained by the Office of the State Judge Advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2406 (November 2009).

§704. Legal Reviews

A. Upon conclusion of a court-martial, the military judge forwards the court-martial file to the appropriate staff judge advocate, who prepares a written legal review for the convening authority. For an example, see Figure 7-7. If the approved sentence of a SPCM includes a dishonorable discharge, the State Judge Advocate will also review the record, after the SPCMCA's SJA's review and before the convening authority's action. All GCM's will also be reviewed by the State Judge Advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2407 (November 2009).

§705. Matters Submitted by the Accused

A. After a general or special court-martial, the accused may submit matters under R.C.M. 1105 within the later of 10 days after a copy of the authenticated record of trial or, if applicable, the recommendation of the staff judge advocate or legal officer, or an addendum to the recommendation containing new matter is served on the accused, whichever is later. An accused in a summary court-martial may submit matters under R.C.M. 1105 within 7 days after the sentence is announced. If, within the 7 or 10-day period, the accused shows that additional time is required for the accused to submit such matters, the convening authority or that authority's staff judge advocate may, for good cause, extend the 7 or 10-day period for not more than 20 additional days; however, only the convening authority may deny a request for such an extension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2407 (November 2009).

§706. Convening Authority's Action

A. General. Upon completion of the legal review(s), the convening authority takes action on the case.

1. He may approve all or part of the adjudged sentence or for any or no reason disapprove the findings and sentence.

2. He may approve only findings of guilty and the sentence or part or amount of the sentence that he finds correct in law and fact and that he in his discretion determines should be approved (unless he indicates otherwise, approval of the sentence is approval of the findings).

3. If he approves any part of the adjudged sentence which has not been executed, he may order the approved sentence executed, or he may suspend the sentence. Exception: The record of trial of all general courts-martial and all special courts-martial in which the approved sentence includes dishonorable discharge must be reviewed by the State Judge Advocate General, after the convening authority's approval but before the sentence is ordered executed.

4. If the convening authority disapproves the findings and sentence, he may order a rehearing, except where there is a lack of evidence of guilt in the record to support the findings. When he disapproves the findings and sentence, he will state the reasons for disapproval. If he disapproves the

findings and sentence and does not order a rehearing, he will dismiss the charges.

B. Concurrent or Consecutive Sentences. Unless otherwise specifically so designated by the military judge or court members, if a sentence to confinement is adjudged on two or more separate and distinct offenses, the convening authority may order the periods of confinement into execution consecutively (one punishment starts after the other has been served) or concurrently (the punishments are served at the same time).

C. Dismissal, Bad Conduct, or Dishonorable Discharge. If the adjudged sentence includes dismissal, bad conduct discharge, or dishonorable discharge and total forfeiture of all pay and allowances, and if the convening authority disapproves the dismissal, bad conduct discharge, or dishonorable discharge, he must mitigate the adjudged forfeitures. In doing so, he is bound by the same limitations which exist on the power of a court-martial to adjudge forfeitures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2407 (November 2009).

§707. Suspension of Sentences

A. General. The military judge, summary court-martial officer, or the convening authority may suspend execution of any sentence. [LCMJ Article 71(B).] No penalty or sentence may be suspended beyond a reasonable period.

B. Partial Suspension of Sentence. The military judge, summary court-martial officer, or convening authority may suspend any part or amount of any sentence which has not previously been paid or served. For example, an accused who has been sentenced to 7 days' confinement could be ordered into confinement for 3 days and the remaining 4 days suspended; or an accused who has been sentenced to a \$25 fine could be ordered to pay \$10 and payment of the remaining \$15 suspended.

C. Length of Suspension Term. A court-martial sentence may be suspended by the military judge or convening authority for a reasonable period of time. The suspension period cannot extend beyond the expiration of an enlisted accused's present term of service, and is subject to the following maximum periods:

1. NJP—6 months;
2. SCM—12 months;
3. SPCM—18 months;
4. GCM—24 months.

D. Procedure. If the military judge or convening authority does suspend the sentence, the terms of the suspension shall be stated on a document entitled, Conditions of Suspended Sentence, [See Figure 7-5] and the convening authority may include any additional terms the accused may have agreed to in a pretrial agreement (for example, to make restitution). To avoid any misunderstanding or dispute regarding what the terms of suspension are, it is important to obtain the probationer's written acknowledgement of receipt of such terms. If a pretrial agreement was entered into, it will contain the probationer's signature and should set out all terms of suspension. However, if a pretrial agreement does not set out the terms of suspension, the convening authority shall:

1. specify in writing the terms of the suspension;
2. cause a copy of the terms to be served in person on the probationer (do not serve them by mail), and;
3. cause a receipt to be secured from the probationer for service of the terms of the suspension.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2407 (November 2009).

§708. Execution of Sentence Involving Custody

A. General. Sentences of confinement adjudged by military courts shall be served in the Dabadie Correctional Center at Camp Beauregard, Louisiana. When special circumstances require confinement at another facility, placement of military prisoners in such other facilities may be approved by the Adjutant General or the State Judge Advocate.

B. Order of Commitment. If the convening authority approves any portion of a court-martial sentence that includes confinement and does not suspend that confinement, he will issue an Order of Commitment, if confinement has not been deferred. [See Figure 7-3.] The convening authority may allow the convicted accused to serve his sentence to confinement on some basis other than "straight-time" (for example, by allowing service on weekends or participation in a work-release program), in which case he should make the appropriate arrangements with confinement authorities prior to issuing the Order of Commitment. Any such arrangements are set out in that portion of the Order of Commitment following the words "Special Instructions". The interests of the State of Louisiana and the convicted accused are usually best served by making arrangements through defense counsel for the convicted accused to voluntarily surrender to begin service of sentence, rather than by causing service of the Order of Commitment without prior notice to the convicted accused. Any special medical and/or dental needs of military prisoners should be made known on the Order of Commitment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2408 (November 2009).

§709. Publication of Results

A. Upon completion of his action, the convening authority publishes a Promulgating Order setting forth the results of the trial and his actions. R.C.M. 1114 governs the content and use of Promulgating Orders. Figure 7-4 is a sample Promulgating Order. Consult the Judge Advocate and/or appropriate service regulations to adapt this sample to the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2408 (November 2009).

§710. Distribution and Filing of Charge Sheet

A. When the convening authority has completed his action as outlined above, the original Charge Sheet with all exhibits attached is filed in accordance with instructions promulgated by active component publications as the record of trial. The convening authority forwards a complete and

legible copy of the package to the accused, defense counsel and the reviewing staff judge advocate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2408 (November 2009).

§711. Appeal

A. As provided for in LCMJ Article 66, the First Circuit Court of Appeal shall have appellate jurisdiction over appeal of all LANG courts-martial, excluding summary courts-martial. Once an accused has been provided with notice of final action in a court-martial by the convening authority, he shall have sixty days in which to file a notice of appeal with the military judge and the convening authority. After an accused files a notice of appeal, the trial counsel who prosecuted the court-martial, shall lodge the record of trial, after certification by the military judge, with the Court. Consult LCMJ Article 66 for relevant brief filing deadlines.

B. Once the court acts on the case, the record is returned to the trial counsel, who notifies the state judge advocate and the convening authority of the court's decision. The convening authority will then take further action based on the court's decision. A supplemental promulgating order may be issued to supplement or amend the original court-martial promulgating order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2408 (November 2009).

§712. Fine Payment and Disposition

A. Fines are due when assessed, unless a reasonable delay for payment (normally not to exceed 30 days) is fixed by the military judge or the convening authority. Within 5 days after a fine is paid, the money shall be remitted to Office of the State Judge Advocate. The State Judge Advocate shall then transmit the fine to the comptroller of the State Military Department where it shall be deposited in the State Treasury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2408 (November 2009).

§713. Nonpayment of Fines

A. General. Subject to the limitations set out below, when the sentence of a court-martial includes a fine which is not paid in full within the time allowed by the convening authority after being ordered executed, the convening authority may issue an Order of Commitment, directing law enforcement officers to arrest the accused and confine him for 1 day for every \$1.00 of the fine which remains unpaid. [See LCMJ Article 21.]

B. Nonpayment Because of Indigency. Confinement may not be ordered executed for failure to pay a fine if the accused has made good faith efforts to pay but cannot because of indigency, unless the convening authority determines, after giving the accused notice and opportunity to respond, that no other punishment is adequate to meet the State's interest in appropriate punishment. The burden is on the accused to establish his good faith attempts to pay and his inability to do so because of indigency. If the convening authority intends to order confinement in lieu of an unpaid

court-martial fine, he shall give written notification of such intent to the accused, delivered in person or by certified mail, return receipt requested, in a postage and fees paid envelope deposited in an office of the United States Postal Service, addressed to the accused at his address as shown on the records of the unit. Receipt of notice sent by mail is presumed seven days following date of deposit. If the accused requests additional time to consult with counsel prior to responding, the convening authority should grant a reasonable amount of additional time so that the accused has the opportunity to prepare and present a meaningful response. If the accused fails or refuses to accept personal delivery, or if the notice by mail is returned undelivered, or if the accused does not respond by the time set, the convening authority may proceed summarily. After receiving the accused's response, the convening authority must consult the servicing judge advocate. If, after consultation with the servicing judge advocate, the convening authority finds either that the accused has not demonstrated that he has made good faith efforts to pay the fine, or that the accused has not demonstrated that his failure to do so is because of indigency, he may order confinement executed. If vacation of suspension of a sentence to confinement is also ordered, the convening authority will issue an Order of Commitment [Figure 7-3] in the appropriate amount of days; the convening authority may order the two periods of confinement to run concurrently or consecutively. If, after consultation with the servicing judge advocate, the convening authority finds that the accused has demonstrated that he has made good faith efforts to pay the fine, and that his failure to do so is because of indigency, the convening authority may not order confinement; he will recall and modify his earlier action approving the fine, either by granting additional time to pay the fine (if the accused has demonstrated a likelihood of future ability to pay, or can only pay in installments), by remitting the fine, or by modifying approval of the fine to approval of forfeitures in the same or a lesser amount (in doing so, he is not bound by the limitations to adjudge forfeitures which exist on a court-martial. The convening authority must satisfy himself that he has all relevant information before him prior to making his findings. If he deems it necessary, he may appoint a court of inquiry under Section 135, or he may request that a military judge be detailed to conduct a hearing into the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2408 (November 2009).

§714. Vacating Suspensions

A. General. Subject to the limitations of the preceding paragraph, if during the period of suspension the convening authority receives information that the probationer may have violated any term of that suspension, he may, after consulting with the appropriate judge advocate, begin proceedings to consider whether the suspension will be vacated (terminated).

Notice Requirement. The procedure is initiated by written notification to the probationer, delivered in person or by certified mail, return receipt requested, in a postage and fees paid envelope deposited in an office of the United States Postal Service, addressed to the probationer at his address as shown on the records of the unit. If the probationer fails or refuses to accept personal delivery, or if the notice by mail is returned undelivered, the convening authority may proceed summarily. Receipt of notice sent by mail as set out above is presumed seven days following date of deposit.

B. Requests for Continuance. If the accused requests additional time to consult with counsel or to gather additional information prior to responding, the convening authority should grant a reasonable amount of additional time so that the accused may have the opportunity to prepare and present a meaningful response.

C. Hearing Procedures. The convening authority must satisfy himself that he has the facts of the matter before him prior to deciding whether to vacate the suspension. If he deems it necessary, he may appoint an investigating officer and/or consult with his servicing staff judge advocate. After carefully and thoroughly considering all information before him, the convening authority must determine what disposition to make of the alleged violation of suspension. He may:

1. continue the accused on suspension;
2. vacate the suspension, remit any part or amount of the unexecuted part of the sentence, and order the remainder of the sentence into execution (if the vacation is based on failure to pay a fine); or
3. he may vacate the suspension and order the unexecuted portion of the sentence into execution. In addition, he may initiate court-martial charges or non-judicial punishment for the act constituting the alleged violation of suspension, if such act also is a violation of the Code.

D. Written Orders. If the convening authority vacates the suspension, an appropriate order is published [See Figure 7-6] and, if confinement is ordered executed, he issues an Order of Commitment [See Figure 7-3.]

E. SCM Record of Trial (Figure 7-1)

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL			
1a. NAME OF ACCUSED <i>(Last, First, MI)</i> SNUFFY, JOE I.	b. GRADE OR RANK SGT	c. UNIT OR ORGANIZATION OF ACCUSED HEADQUARTERS SUPPORT COMPANY, 205TH ENGINEER BATTALION, 104 AVENUE B, BOGALUSA, LA 70427	d. SSN 999-99-9999
2a. NAME OF CONVENING AUTHORITY <i>(Last, First, MI)</i> ALL, EYE, C.	b. RANK LTC	c. POSITION Commander	d. ORGANIZATION OF CONVENING AUTHORITY 205TH ENGINEER BATTALION, 104 AVENUE B, BOGALUSA, LA 70427
3a. NAME OF SUMMARY COURT-MARTIAL <i>(If SCM was accuser, so state)</i> JUDGE, IDE P.	b. RANK MAJ	c. UNIT OR ORGANIZATION OF SUMMARY COURT-MARTIAL 205TH ENGINEER BATTALION, 104 AVENUE B, BOGALUSA, LA 70427	
<i>(Check appropriate answer)</i>			
			YES
			NO
4. At a preliminary proceeding held on <u>4 MAY</u> , 2008, the summary court-martial gave the accused a copy of the charge sheet.			X
5. At that preliminary proceeding the summary court-martial informed the accused of the following:			
a. The fact that the charge(s) had been referred to a summary court-martial for trial and the date of referral.			X
b. The identity of the convening authority.			X
c. The name(s) of the accuser(s).			X
d. The general nature of the charge(s).			X
e. The accused's right to object to trial by summary court-martial.			X
f. The accused's right to inspect the allied papers and immediately available personnel records.			X
g. The names of the witnesses who could be called to testify and any documents or physical evidence which the summary court-martial expected to introduce into evidence.			X
h. The accused's right to cross-examine witnesses and have the summary court-martial cross-examine on behalf of the accused.			X
i. The accused's right to call witnesses and produce evidence with the assistance of the summary court-martial if necessary.			X
j. That during the trial the summary court-martial would not consider any matters, including statements previously made by the accused to the summary court-martial, unless admitted in accordance with the Military Rules of Evidence.			X
k. The accused's right to testify on the merits or to remain silent, with the assurance that no adverse inference would be drawn by the summary court-martial from such silence.			X
l. If any findings of guilty were announced, the accused's right to remain silent, to make an unsworn statement, oral or written or both, and to testify and to introduce evidence in extenuation or mitigation.			X
m. The maximum sentence which could be adjudged if the accused was found guilty of the offense(s) alleged.			X
n. The accused's right to plead guilty or not guilty.			X
6. At the trial proceeding held on <u>4 MAY</u> , 2008, the accused, after being given a reasonable time to decide, <input type="checkbox"/> did <input checked="" type="checkbox"/> did not object to trial by summary court-martial. <i>(Note: The SCM may ask the accused to initial this entry at the time the election is made.)</i>			
7a. The accused <input type="checkbox"/> was <input checked="" type="checkbox"/> was not represented by counsel. <i>(If the accused was represented by counsel, complete b, c, and d below.)</i>			
b. NAME OF COUNSEL <i>(Last, First, MI)</i>			c. RANK <i>(if any)</i>
d. COUNSEL QUALIFICATIONS			

DD Form 2329, AUG 84 (EG)

8. The accused was arraigned on the attached charge(s) and specification(s). The accused's pleas and the findings reached are shown below:		
CHARGE(S) AND SPECIFICATION(S)	PLEA(S)	FINDINGS (Include any exceptions and substitutions)
CHARGE I: ARTICLE 86. SPECIFICATION: Sergeant Joe I. Snuffy, on or about 4 April 2008 without authority, fail to go to her appointed place of duty, to wit: 1800 first formation 4 April 2008 and did remain so absent until 6 April 2008.	Guilty	Guilty
	Guilty	Guilty
CHARGE II: VIOLATION OF THE LCMJ, ARTICLE 92. SPECIFICATION: Sergeant Joe I. Snuffy, on or about 4 April 2008, having knowledge of a lawful order issued by Sergeant First Class Walter B. Owens to "report to drill," or words to that effect, an order which it was her duty to obey, did fail to obey the same by wrongfully going to Oregon without permission to leave drill.	Guilty	Guilty
	Guilty	Guilty
CHARGE III: VIOLATION OF THE LCMJ, ARTICLE 112. SPECIFICATION: Sergeant Joe I. Snuffy, on or about 16 March 2008, found drunk while on duty as Battalion NBC Noncommissioned Officer.	Guilty	Guilty
	Guilty	Guilty
9. The following sentenced was adjudged: To receive a written reprimand, to be reduced to the grade of E4, and to forfeit \$273.04 pay per month for one month.		
10. The accused was advised of the right to request that confinement be deferred. (Note: When confinement is adjudged.) <input type="checkbox"/> YES N/A <input type="checkbox"/> NO	11. The accused was advised of the right to submit written matters to the convening authority, including a request for clemency, and of the right to request review by the Judge Advocate General. <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
12. AUTHENTICATION		
_____		_____
<i>Signature of Summary Court-Martial</i>		<i>Date</i>
13. ACTION BY CONVENING AUTHORITY		
The sentence is approved and will be executed.		
_____		_____
EYE C. ALL <i>Typed Name of Convening Authority</i>		COMMANDING <i>Position of Convening Authority</i>
_____		_____
LTC <i>Rank</i>		_____
_____		_____
<i>Signature of Convening Authority</i>		<i>Date</i>

DD Form 2329 Reverse, AUG 84

F. Report of Result of Trial (Figure 7-2)

DEPARTMENT OF THE ARMY REPORT OF RESULT OF TRIAL <small>For use of this form, see AR 27-10; the proponent agency is OTJAG</small>					
TO: Commander, 205TH ENGINEER BATTALION, 104 AVENUE B, BOGALUSA, LA 70427					
1. Notification under R.C.M. 1101 and AR 27-10, paragraph 5-30 is hereby given in the case of the State of Louisiana v _____ <u>SGT Joe I. Snuffv, 999-99-9999, HSC, 205TH EN BN, 104 AVENUE B, BOGALUSA, LA 70427.</u>					
2. Trial by <u>Summary</u> court-martial on <u>4 May</u> , <u>2008</u> at <u>BOGALUSA, LA 70427.</u> convened by: CMCO Number _____ HQ, detail of Major IDE P. Judge on <u>3 May 2008.</u>					
3. Summary of offenses, pleas, and findings:					
CH	ART UCMJ	SPEC	BRIEF DESCRIPTION OF OFFENSE(S)	PLEA	FINDING
I	86	The	AWOL Period 4 April 2008 until 6 April 2008.	Guilty	Guilty
II	92	The	Disobeying a lawful order.	Guilty	Guilty
III	112	The	Drunk while on duty.	Guilty	Guilty
4. SENTENCE: To receive a written reprimand, to be reduced to the grade of E4, and to forfeit \$273.04 pay per month for one month.					
5. Date sentence adjudged and effective date of any forfeiture or reduction in grade (YYYYMMDD): <u>20080504</u> (See UCMJ Articles 57-58b and R.C.M. 1101.)					
6. Contents of pretrial agreement concerning sentence, if any: N/A					
7. Number of days of presentence confinement, if any: N/A					
8. Number of days of judge-ordered administrative credit for presentence confinement or restriction found tantamount to confinement, if any: N/A					
9. Total presentence confinement credit toward post-trial confinement: N/A					
10. Name(s) and SSN(s) of companion accused or co-accused, if any: N/A					
11. DNA processing IAW 10 U.S.C. § 1565 <input type="checkbox"/> is <input checked="" type="checkbox"/> is not required.					
12. Conviction(s) <input type="checkbox"/> does <input checked="" type="checkbox"/> does not require sex offender registration IAW 42 U.S.C. § 14071.					
CF: Cdr, HSC, 205 th EN BN; Service Member, S1, 205 th EN BN					
TYPED NAME			SIGNATURE		
IDE P. JUDGE					
RANK			BRANCH OF SERVICE		
MAJ			Army		

DA FORM 4430, SEP 2002

DA FORM 4430-R, MAY 87, IS OBSOLETE

USAPA V1.00ES

G. Order of Commitment Pursuant to Court-Martial (Figure 7-3)



DEPARTMENTS OF THE ARMY AND AIR FORCE
UNIT HEADING
UNIT ADDRESS

LANG-

4 May 2008

ORDER OF COMMITMENT PURSUANT TO COURT-MARTIAL

TO: Warden, Dabadie Correctional Facility, Camp Beauregard, Louisiana

The defendant, SGT JOE I. SNUFFY, XXX-XX-9999, HEADQUARTERS SUPPORT COMPANY, 205TH ENGINEER BATTALION, has been convicted of violating one specifications of Louisiana Code of Military Justice Article 86 (AWOL), one specification of the Louisiana Code of Military Justice Article 92, (DISOBEYING A LAWFUL ORDER), AND one specification of the Louisiana Code of Military Justice Article 112, (DRUNK WHILE ON DUTY) by a Louisiana National Guard Summary Court-Martial convened by the commander of the 205th Engineer Battalion, LTC Eye C. All.

Therefore, pursuant to Louisiana Code of Military Justice Articles 11 and 58 (La. Revised Statutes 29:111 and 158), the sentence of this Court-Martial, and the action of the convening authority in this matter:

YOU ARE DIRECTED TO COMMIT TO CONFINEMENT FORTHWITH THE ABOVE-NAMED MEMBER OF THE LOUISIANA NATIONAL GUARD AND TO KEEP SAID PERSON IN YOUR CUSTODY FOR THE FOLLOWING PERIODS OF COMMITMENT:

23 May 2008 through no later than 0800 on 30 May 2008

While committed, the said individual shall be subject to the same discipline and treatment as other persons so confined and/or committed under the laws of the State of Louisiana.

When the above-named individual has been released, you are requested to notify the following representative of the Louisiana National Guard:

SFC Readiness NCO (985) 999-9999

By authority of the Governor of the State of Louisiana, I affix my official signature, this 4th day of February, 2008.

EYE C. ALL
LTC, EN, LANG
Commanding

H. Promulgating Order (Figure 7-4)

[UNIT HEADING]

LANG-SJA

DATE

SPECIAL COURT-MARTIAL ORDER NUMBER 08-01

Private (E2) John Doe, 000-00-0000, Company A, 199th Support Battalion, 256th Infantry Brigade (M), Lafayette, Louisiana, was arraigned at Fort Polk, LA, on the following offenses at a special court-martial convened by the Commanding General, 256th Inf. Bde.

Charge I. Article 86. Plea: Guilty Finding: Guilty

Specification 1: Unauthorized absence from unit from 25 June 1993 to 27 June 1993. Plea: Guilty. Finding: Guilty

Specification 2: Failure to repair on 24 June 1993. Plea: None entered. Dismissed on motion of defense for failure to state an offense.

Charge II. Article 91. Plea: Not Guilty. Finding: Not Guilty.

Specification: Disrespect to superior noncommissioned officer on 24 June 1993 by saying to him, "Stick it in your ear." Plea: Not Guilty. Finding: Guilty.

Charge III. Article 112a. Plea: Guilty. Finding: Guilty

Specification 1: Wrongful possession of 150 grams of marijuana on 24 June 1993. Plea: Guilty. Finding: Guilty

Specification 2: Wrongful use of marijuana while on duty as a sentinel on 23 June 1993. Plea: Guilty. Finding: Guilty.

SENTENCE

Sentence was adjudged on 8 July 1993. A fine of \$100.00, forfeiture of all pay and allowances, Dishonorable discharge, reduction to the lowest enlisted grade, and confinement of 6 months.

ACTION

The sentence is approved and will be executed.

[SIGNATURE BLOCK]

I. Conditions of Suspension of Sentence (Figure 7-5)

[UNIT HEADING]

LANG-XXX

DATE

FROM: (Individual Concerned,
Name, Grade, Organization)_____

TO: (Convening Authority,
Court-Martial No.)_____

I hereby accept suspension of any sentence imposed against me in the subject court-martial. I have had advice and assistance of my Defense Counsel in preparing this Request. I hereby agree to abide by the following terms and conditions of suspension:

I will at all times keep my military unit advised of my home and work address(es) and telephone number(s).

I will accept and receipt for all mail sent to me by the military.

I will pay any fine imposed against me by this court-martial which has been approved, within a period of ten (10) days from approval thereof, unless such period of time is extended by the convening authority.

I will commit no violation of the Louisiana Code of Military Justice during the period of suspension.

I specifically agree to satisfactorily attend and participate in all military duty to which I am ordered and I agree and understand that it is my responsibility to inform myself of and comply with all duty dates, times, places, proper uniform, and standards of appearance and conduct.

I understand that my failure to fulfill any of the above conditions can result in vacation of my suspension and imposition of the sentence imposed.

Signature blocks for Accused and Defense Counsel (with dates)
Home/Work address/phone for Accused
"Received and Filed" Signature for Military Judge
and convening authority representative (with dates)

J. Notification Regarding Vacation of Suspension (Figure 7-6)

[UNIT HEADING]

TO: _____, Accused

FROM: _____, Convening Authority

SUBJECT: Court-Martial [or Article 15] Number _____

On _____, I [or my predecessor in office] suspended execution on that portion of the sentence of the subject court-martial [Article 15] that called for you to _____

In doing so, certain conditions of suspension were imposed on you. I have received information that you may have violated the following terms of your suspension:

_____ To keep your unit commander advised of your home and work address(es) and home and work phone number(s) at all times.

_____ To accept and receipt for all mail sent to you by the military.

_____ To pay the fine imposed against you.

_____ To commit no violation of the LCMJ.

Specifically, I have been told that you

You are required to reply in writing to me concerning this matter. Your written response must be received at this headquarters no later than _____ hours on _____.

You may, in lieu of a response to the allegations, request a reasonable amount of additional time to consult with defense counsel prior to responding to the allegations. Your response to the allegations will then be required at the expiration of that additional time, if additional time is granted.

In the event this or any other response required of you is not received by the time set, I will act on this matter without further notice to you.

[SIGNATURE BLOCK]
CF: Servicing SJA
Trial Counsel
Defense Counsel

K. SJA's Review for Legal Sufficiency (Figure 7-7)

[UNIT HEADING]

LANG-EN-SJA

1 July 2008

MEMORANDUM FOR: Commander, 225th Engineer Brigade

SUBJECT: Legal Sufficiency Review of Special Court-martial, SPC JOHN DOE, XXX-XX-XXXX

STATEMENT OF FACTS: SPC John Doe was accused of unlawfully wearing the Purple Heart Ribbon.

STATEMENT OF LAW: SPC John Doe was charged under Article 134, Louisiana Code of Military Justice. The elements are that the accused wore certain insignia on his uniform, the accused was not authorized to wear the insignia on his uniform, the wearing was wrongful, and the conduct of the accused was prejudice of the good order and discipline of the armed forces or brought discredit to the armed forces.

STATEMENT RELATING LAW TO FACTS: SPC John Doe admitted, under oath, that he wore the insignia without authorization in violation of the Louisiana Code of Military Justice Article 134.

RECOMMENDATION: The convening authority approve the findings and sentence as adjudged.

POC is the undersigned at (225) 555-1212.

JOHN B. DUNLAP, III
COL, JA, LANG
State Judge Advocate

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2409 (November 2009).

Chapter 8. Reserved.

Chapter 9. Complaints Under Article 138, LCMJ

§901. General

A. Purpose. This chapter establishes procedures for the preparation, submission, and disposition of complaints made pursuant to Article 138, LCMJ by a member of the Louisiana National Guard against a commanding officer.

B. Applicability. This chapter applies to all members of the Louisiana National Guard as defined in LCMJ Article 1.

C. Resolution of Complaints. LANG policy is to resolve complaints at the lowest level of command and to provide adequate administrative procedures for such resolution. Article 138, LCMJ, is one of several methods available. It provides for consideration at three successive levels. The first attempt to resolve a perceived wrong must be between the servicemember and the commanding officer whom the servicemember believes committed the wrong. If conventional measures are unsuccessful, the servicemember may submit a request for redress under Article 138. Every reasonable measure should be taken to resolve complaints at this lowest level. The principal responsibility for acting on Article 138 complaints lies with the Adjutant General (TAG).

D. Right to Complain. A member of the Louisiana National Guard has a statutory right to submit an Article 138 complaint. Commanders will not restrict the submission of such complaints or retaliate against a member for submitting a complaint.

E. Complaint to be Forwarded. Every complaint will be expeditiously forwarded to the the Adjutant General unless voluntarily withdrawn by the complainant.

F. Complainant Not a Participant. A servicemember who submits an Article 138 complaint does not have a right to participate in any ensuing procedures under this regulation. However, the servicemember may be asked to testify, provide additional information, or otherwise assist in resolving the complaint.

G. Presumption of Regularity. If the available evidence does not establish the validity of a complaint, despite vigorous, good faith investigative efforts to do so, a commanding officer is presumed to have acted properly.

H. Processing Complaints Through Command Channels. Complaints are processed in the chain of command. Area jurisdiction and attachments and assignments for LCMJ or other administrative purposes do not affect the processing of Article 138 complaints. When forwarding a complaint to the Adjutant General, intermediate commanders may deviate from strict adherence to command channels if such deviation will facilitate action on the complaint. However, no commander who has a direct interest in the complaint will be bypassed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2416 (November 2009).

§902. Explanation of Terms

A. The terms, "complainant," "complaint," "request for redress," "respondent," "superior commissioned officer," and "wrong" are explained in the Glossary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2416 (November 2009).

§903. Inappropriate Subject Matter for Article 138

A. General. The procedures prescribed in this chapter are intended to ensure that an adequate official channel for redress is available to every servicemember who believes the servicemember's commanding officer has wronged the servicemember. For many adverse actions, however, there are other, more specific channels and procedures to ensure the servicemember has an adequate opportunity and forum to be heard. Those specific procedures usually are more effective and efficient for resolving such matters, and Article 138 procedures should neither substitute for nor duplicate them. Generally, an action is an inappropriate subject for resolution under Article 138 procedures when:

1. review is specifically provided by the LCMJ or the action is otherwise reviewable by a court authorized by the LCMJ or by a military judge or military magistrate;
2. it is taken pursuant to the recommendation of a board authorized by LANG regulation at which the complainant was substantially afforded the rights or a respondent [See Chapter 5, AR 15-6.];
3. LANG regulations specifically authorize an administrative appeal;
4. it is a commander's recommendation or initiation of an action included in, or above.

B. Examples. Examples of actions for which Article 138 is inappropriate include:

1. matters relating to court-martial, non-judicial punishment, confinement, and similar actions taken pursuant to the LCMJ, the MCM, or military criminal law regulations;
2. officer or enlisted elimination actions [AR 635-100; AR 635-200.];
3. MOS reclassification board actions [AR 635-200.];
4. withdrawals of flying status [AR 600-107];
5. appeals from findings of pecuniary or financial liability [See AR 37-103, AR 735-5 for examples.];
6. appeals from administrative reductions in enlisted grades [AR 600-200.];
7. appeals from officer evaluation reports [AR 623-105] or enlisted evaluation reports [AR 600-205.];
8. filing of adverse information (e.g. administrative reprimand) in official personnel records [AR 600-37.].

C. Referral to Alternate Channels. When TAG receives an Article 138 complaint apparently involving an adverse action for which more specific channels and appropriate procedures are available, the officer will act on it as prescribed by regulation. [See AR 27-10, paragraph 20-11.] A decision to leave the matter to be processed in those alternate channels and to so advise the complainant constitutes "proper measures for redressing the wrong complained of" within the meaning of Article 138.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2417 (November 2009).

§904. Making a Complaint

A. Complainant's Request for Redress. Before submitting a complaint under Article 138, a member of the Louisiana National Guard must make a written request for

redress of the wrong to the commanding officer the member believes has wronged the member. The request for redress.

1. Generally should be prepared in the format shown in Figure 9-1.

2. Must clearly identify the commanding officer against whom it is made, the date and nature of the alleged wrong and, if possible, the specific redress desired.

3. Will be submitted through command channels to the commanding officer who is alleged to have committed the wrong.

C. Response by the Commanding Officer. A commanding officer receiving a request for redress submitted under this regulation will respond, in writing, within 60 days from receipt. If a final response within 60 days is not possible, an interim response will be provided that indicates the estimated date of a final response.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2417 (November 2009).

§905. Complaint

A. General. A member of the Louisiana National Guard may submit an Article 138 complaint for any act or omission by the member's commanding officer which the member believes to be a wrong and for which the member has requested redress and been refused. A member who, through no fault of the member's own, has not received a final or interim response within 60 days may elect to treat that fact as a refusal of his request for redress.

B. Form of Complaint. Figure 9-1 contains sample format for Article 138 complaints. The complaint should:

1. be typed or legibly written and signed by the complainant.
2. identify the complainant as a member of the Louisiana National Guard subject to the LCMJ;
3. identify the complainant's current military organization and address;
4. identify the complainant's military organization at the time of the alleged wrong;
5. identify the commanding officer whose act or omission is complained of;
6. indicate the date a written request for redress was submitted to that commanding officer and either that:
 - a. the request was refused, in whole or in part, and the date thereof; or
 - b. a final interim or response was not received within 60 days;
7. include a statement that it is a complaint submitted under the provisions of Article 138 and this regulation;
8. clearly and concisely describe the specific wrong complained of. When not readily apparent, state the reason the complainant considers it a wrong;
9. state the specific redress the complainant seeks. Unless it is readily apparent, state the reason the complainant considers that redress appropriate;
10. Have attached to it:
 - a. the complainant's request to the complainant's commanding officer for redress and the commanding officer's response, if any;
 - b. any supporting information or documents the complainant desires to be considered.

C. Timeframe for Submitting Complaint. The complainant will deliver the complaint to his immediate superior commissioned officer within 90 days of the date of the complainant's discovery of the wrong, excluding any period during which the request for redress was in the hands of the respondent. If the complainant corrects and resubmits the complaint after TAG has returned it as deficient, the days the complaint was in military channels between submission by and return to the complainant will also be excluded in computing the 90-day period.

D. Withdrawal. The complainant may withdraw the complaint at any time before final action is taken by TAG. If a complaint is withdrawn, it must be a completely voluntary act on the part of the complainant. Prior to receipt by the TAG, the complaint may be withdrawn by an oral request of the complainant. After receipt by the TAG, the complainant must submit a written request to the officer in possession of the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2417 (November 2009).

§906. Legal Advice

A. Complainant. A member who desires to submit an Article 138 complaint may:

1. a member who desires to submit an Article 138 complaint may consult a Judge Advocate assigned to member of LANG TDS for advice and assistance in drafting the complaint. The member also should be advised of any other laws or regulations under which he may proceed to seek redress. In connection with Article 138 complaints, LANG TDS will be provided only for such consultation and advice, but not to represent the member in any ensuing Article 138 proceedings;

2. consult or retain other legal counsel at no expense to the Government. Such counsel may attend any proceedings under this regulation which are open to other members of the public, but may not participate in them.

B. Respondent. A commanding officer who receives a request for redress or against whom an Article 138 complaint is submitted may obtain necessary legal advice from the commanding officer's servicing Judge Advocate.

C. TAG. The TAG shall obtain a review for legal sufficiency from the State Judge Advocate prior to notifying the complainant of action taken on the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2418 (November 2009).

§907. Action by Person Receiving the Complaint

A. A superior commissioned officer who receives an Article 138 complaint will promptly forward it to the Adjutant General. The person receiving the complaint, or through whom it is forwarded, may add pertinent material to the file or grant any redress within that person's authority. If either action is taken it will be noted in the transmittal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2418 (November 2009).

§908. Determination Not Required by The Adjutant General

A. Deficient Complaint. If a complaint does not substantially meet the requirements of Article 138, as implemented by this Chapter, no determination as to the merits of the complaint is required. Unless the deficiency is waived [See b. below], such a complaint will be returned to the complainant with a written explanation of the deficiency and, if correctable, how it may be corrected. Neither the deficient complaint nor the TAG's action on the complaint should be forwarded to the Governor.

B. Waivable Deficiencies. The TAG may waive the following deficiencies when he considers it necessary in the interest of fairness, based upon good cause, and appropriately so noted in the correspondence forwarding the complaint.

1. The complaint was not delivered to the complainant's superior commissioned officer within 90 days of the date of discovery of the wrong.

2. Redress has not been requested and refused.

3. The complaint is repetitive in that it is substantially the same as a previous complaint by the same complainant on which official action has already been taken.

C. Nonwaivable Deficiencies. The following deficiencies may not be waived by the TAG:

1. The complainant was not a member of the Louisiana National Guard and subject to the LCMJ when the complaint was delivered to his superior commissioned officer.

2. The wrong complained of was not a discretionary act or omission, or it was not by the complainant's commanding officer, or it was not under color of Federal or State military authority, or it did not adversely affect the complainant personally.

3. The complaint does not adequately identify a respondent or the wrong complained of.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2418 (November 2009).

§909. Withdrawal of Complaint

A. Once a voluntary request for withdrawal has been received, no further action will be taken under this Chapter. This does not preclude other appropriate action to resolve any matters raised by the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2418 (November 2009).

§910. Determination Required by the Adjutant General

A. Except where the TAG's determination is not required on the Article 138 complaint under the preceding paragraphs, the TAG will take the following actions.

1. Examination into the Complaint. The TAG will examine into the complaint. Except as provided below, the nature and method of the examination is discretionary. The examination may be delegated, but not to a person subordinate to the respondent in the chain of command nor, except for good cause explained in the correspondence

forwarding the complaint, to a person junior in rank to the respondent. Examinations so delegated will be conducted in accordance with AR 15-6 and will include a specific recommendation regarding the appropriateness of the redress requested and of any other corrective action.

2. Nature and Extent of Examination. Unless the TAG believes that established channels for redressing the alleged wrong would be inadequate in the particular case, the examination will be limited to determining whether the other channels are, in fact, available for resolving the alleged wrong. Specific findings will be made as to whether the act or omission complained of was:

- a. in violation of law or regulation;
- b. beyond the legitimate authority of the respondent;
- c. arbitrary, capricious, or an abuse of discretion;
- d. materially unfair.

3. Action on the Complaint. The TAG must act personally on the Article 138 complaint. This authority may not be delegated. After examination into the complaint is completed, TAG will take the first of the following actions which applies to the particular complaint:

- a. If the alleged wrong is of an inappropriate subject matter for an Article 138 complaint [See paragraph 9-3], unless the TAG believes that established channels for redressing the alleged wrong would be inadequate in the particular case, such commanding officer will advise the complainant that:

- i. the alleged wrong already is being considered in other official channels, if that is the case; or

- ii. a more appropriate official channel is available to redress the alleged wrong. TAG will specify that channel, any applicable regulation under which the complainant may proceed, and any DA or DAF assistance available to the complainant in using that channel.

- iii. determine the merits of the complaint and of the redress requested. If no redress is appropriate, the TAG will deny the redress. The TAG will grant whatever redress is appropriate and is within such his authority to provide.

- b. TAG will notify the complainant in writing of the action taken on the complaint.

4. Action by TAG. Before final disposition by TAG, each Article 138 file will be reviewed by the State Judge Advocate (or that officer's designee) for legal sufficiency. The SJA may, in that officer's discretion, return the file for additional information or investigation or for other action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2418 (November 2009).

§911. Forwarding Complaint to Governor

A. Upon completion of action on the complaint, TAG will forward a summary of the complaint and the action taken to the Governor, as required by LCMJ Article 138.

B. Complaint (Figure 9-1)

[UNIT HEADING]

LANG-xxx

Date

MEMORANDUM FOR Commander, HHC, 199th Support Battalion, 5500 Coliseum Blvd, Alexandria, LA 71303-3707

SUBJECT: Request for Redress (LCMJ Article 138)

On 7 July, 1992 you announced that all members of the unit were encouraged, but not required to join in a work project on the following day, 8 July, 1992, which a domestic action activity was involving cleaning public areas in Leesville, LA. As I had previously made plans for that day, I elected not to participate. Thereafter, you turned down my request for special leave to participate in my cousin's wedding scheduled for 14 July, 1992.

I think your refusal to approve my leave is unreasonable and is in retaliation for my absence from the voluntary domestic action program described above. I consider this a wrong within the meaning of Article 138, LCMJ and LAARNG Reg 27-10, Chapter 11.

As redress, I request approval of my leave request.

JOHN Q. SERVICEMEMBER
SGT, HHC
199th Support Battalion

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2419 (November 2009).

§912. Military Justice Abbreviations

A. The following abbreviations shall apply throughout this regulation unless otherwise expressly provided.

AD—active duty
AR—Army Regulation
ARNG—Army National Guard
AT—annual training
AWOL—absent without leave
BCD—bad conduct discharge
CID—Criminal Investigation Division
DA—Department of Army, District Attorney
DAF—Department of Air Force
DD—Dishonorable Discharge
DOD—Department of Defense
DRU—direct reporting unit
ETS—expiration term of service
F & AO—(MilPay)
GCM—General Court-Martial
GCMCA—General Court-Martial Convening Authority
IO—investigating officer
JA—judge advocate
JAGC—Judge Advocate Generals' Corps
LA ANG—Louisiana Air National Guard
LAARNG—Louisiana Army National Guard
LCMJ—Louisiana Code of Military Justice (R.S. 29:101-242)
MCM—Manual for Courts-Martial, United States, as amended
M.R.E.—Military Rules of Evidence, contained within the MCM
MOS—Military Occupational Specialty
MPRJ—Military Personnel Records Jacket
MUTA—Multiple Unit Training Assembly
NCO—noncommissioned officer
NGB—National Guard Bureau
NJP—non-judicial punishment under LCMJ Article 15
OMPF—official military personnel file
OTH—other than honorable (discharge)
R.C.M.—rules for courts-martial, contained within the MCM
SCM—summary court-martial
SJA—the state judge advocate
SPCM—special court-martial
SPCMCA—special court-martial convening authority
TAG—the Adjutant General of the State of Louisiana
TJAG—the Judge Advocate General of the U.S. Army
UCMJ—Uniform Code of Military Justice (10 U.S. Code, Chapter 47)
U.S.C.—United States Code

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2420 (November 2009).

§913. Military Justice Definitions

A. The following definitions shall apply throughout this regulation unless otherwise expressly provided.

Abet—to encourage, incite, or aid another to commit a crime. [LCMJ Article 77.]

Accessory After the Fact—any person subject to the LCMJ who, knowing that an offense punishable by the Code has been committed, receives, comforts, or assists the

offender in order to hinder or prevent his apprehension, trial or punishment. [LCMJ Article 78.]

Accused—one who is charged with an offense under the LCMJ. Synonymous with "Defendant."

Accuser—any person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any other person who has an interest other than official interest in the prosecution of the accused.

Act—includes a failure or omission to perform a legal duty.

Actual Knowledge—a state wherein the person in fact knows of the existence of an order, regulation, fact, etc., in question.

Additional Charges—new and separate charges preferred while other preferred charges are still pending against the same accused.

Adjutant General—a general officer appointed by the Governor to act as the Adjutant General of the Louisiana Military Forces pursuant to R.S. 29:10. Abbreviated as TAG.

Admission—a self-incriminatory statement falling short of a complete acknowledgement of guilt. See also, "Confession."

Admonition—a warning or reminder given to an offender that a specific act is considered to be misconduct; given to deter repetition and to advise the offender of the consequences that may flow from a recurrence of that misconduct. May be oral or written, but usually oral.

Affirmation—see *Oath*.

Aider and Abettor—one who shares the criminal intent or purpose of the perpetrator, and hence is liable as a principal. [LCMJ Article 77.]

Allegation—the assertion, declaration, or statement of a party in a pleading of what he expects to prove.

Allege—to assert or state in a pleading; to plead in a specification.

Appeal—a complaint to a superior court of an injustice done or error committed by an inferior court whose judgment or decision the court above is called upon to correct or reverse.

Appellant—one who brings an appeal.

Apprehension—the taking of a person into temporary custody upon a reasonable belief that the person apprehended has committed an offense under the LCMJ. [See LCMJ Article 7(A) and definitions of Arrest and Detention.]

Arraignment—the reading of the charges and specifications to the accused or the waiver of their reading coupled with the accused's plea thereto.

Arrest—the moral restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. [See LCMJ Article 9(A) and definitions of Apprehension and Detention.]

Arrest in Quarters—a moral restraint limiting an officer's liberty, imposed as a non-judicial punishment by the governor, TAG, or a designee. [See LCMJ Article 15.]

Article 15—see "Non-judicial Punishment."

Article 32 Investigation—a formal investigation that must precede the referral of any charge to a general court-martial. See LCMJ Article 32.

Article 39(a) Session—a session of a general or special courts-martial called by the military judge, to dispose of

matters not amounting to trial of the accused. [LCMJ Article 39.]

Assault—an attempt or offer with unlawful force or violence to do bodily harm to another, whether or not the attempt or offer is consummated. [LCMJ Article 128.]

Attempt—an act, or acts, done with a specific intent to commit an offense under the LCMJ, amounting to more than mere preparation, and tending, but failing to effect the commission of such offense.

Bad Conduct Discharge—one of two types of punitive discharges that may be awarded an enlisted person under a GCM or SPCM, designed as a punishment for bad conduct. Also called a "BCD." [LCMJ Articles 18 and 19.]

Battery—an unlawful and intentional or culpably negligent application of force to the person of another by a material agency used directly or indirectly. [LCMJ Article 128.]

Challenge—a formal objection to a member of a court or the military judge continuing as such in subsequent proceedings. May be either a challenge for cause - objections based on a fact or circumstance which disqualifies the person challenged from further participation in the proceedings, or peremptory challenge - an objection permitted without a showing of grounds or basis, except that the military judge cannot be peremptorily challenged.

Charge—a formal statement of the LCMJ article(s) which the accused is charged with having violated.

Charge and Specification—a description in writing of the offense(s) which the accused is alleged to have committed; each specification, together with the charge under which it is placed, constitutes a separate accusation.

Circumstantial Evidence—evidence which tends directly to prove or disprove not a fact in issue, but a fact or circumstance from which, either alone or in connection with other facts, a court may, according to the common experience of mankind, reasonably infer the existence or nonexistence of another fact which is in the issue; sometimes called indirect evidence.

Clear Injustice—existence of unwaived legal or factual error which clearly and affirmatively injured the substantial rights of a Servicemember (e.g., discovery of new evidence unquestionably exculpating a convicted Servicemember). See also, "Setting Aside and Restoration."

Command—an organization having a commander who is regarded by superior authority as the individual chiefly responsible for maintenance of discipline therein. Includes companies and batteries, numbered units and detachments, battalions, brigades, service schools, squadrons, wings, groups, flights, and area commands. For example, an infantry company, whether or not separated or detached, is considered to be a command. An infantry platoon, however, which is part of a company and is not separate or detached, is not a command. If the platoon were located in an armory separate from the main company's armory, the platoon normally would be considered a separate, detached command. An order. Any demanding of another to do an act towards commission of a crime. [LCMJ Article 77.]

Commander or Commanding Officer—includes any commissioned officer who by virtue of rank and assignment exercises primary command over a military organization. Primary command authority does not include staff officers. However, for purposes of administration of military justice

under LCMJ, all assistant adjutants general serving in the federally-recognized grade of brigadier general or above are considered commanding officers. For LCMJ Article 138 purposes, this includes an officer in the complainant's chain of command, up to and including the first officer exercising special court-martial jurisdiction over the complainant. A commanding officer against whom an Article 138 complaint has been lodged as referred to in this regulation is called the "respondent," (not to be confused with the identical term used in connection with administrative board proceedings under AR 15-6).

Commissioned Officer—an officer who holds a commission issued by the President of the United States or the Governor of the State of Louisiana.

Common Trial—a trial in which two or more persons are charged with the commission of an offense or offenses which, although not jointly committed, were committed at the same time and place and are provable by the same evidence.

Complainant—under LCMJ Article 138, a member of the Louisiana National Guard who has submitted an Article 138 complaint as referred to in Chapter 9 of this regulation. In civilian criminal law, a complainant refers to anyone who has reported a crime.

Concurrent Jurisdiction—jurisdiction which is possessed over the same parties or subject matter at the same time by two or more separate tribunals. [See Paragraph 5-3 regarding referral to civilian authorities.]

Conditional Guilty Plea—a plea of guilty that reserves in writing the right to appeal adverse determinations of pretrial motions.

Conditions on Liberty—a form of pretrial restraint; orders directing a person to do or refrain from doing certain acts.

Confession—an acknowledgement of guilt of an offense. See also, "Admission."

Confinement—the physical restraint of a person, imposed by either oral or written orders of competent authority, depriving him of freedom. [LCMJ Article 9(A).]

Confinement Facility—facility for the confinement of military prisoners. It applies to transient confinement facilities, installation confinement facilities, area confinement facilities and hospitalized prisoner wards.

Conspiracy—a combination of two or more persons who have agreed to accomplish, by concerted action, an unlawful purpose or some purpose not in itself unlawful but accomplished by unlawful means, and the doing of some act by one or more of the conspirators to effect the object of that agreement. [LCMJ Article 81.]

Constructive Knowledge—knowledge which may be found to have existed because the regulation, notice, fact or directive, etc., at issue was of so notorious a nature, or was so conspicuously posted or distributed, that the accused ought to have known of its existence; knowledge is constructive when it is shown that the accused would in the ordinary course of events, or by the exercise of ordinary care, have secured knowledge of the order, notice or movement, etc.

Court Members—persons designated to serve upon courts-martials for purposes of adjudication as addressed in LCMJ Article 25.

Convening Authority—the officer having the authority to convene a court-martial and/or his successor(s) in command.

Convening Order—the document by which a court-martial is created, which specifies the type of court and lists the time and place of meeting, the names of the members (if any), trial and defense counsel, the military judge, and, when appropriate, the authority by which the court is created.

Convicted—adjudicated guilty after a guilty plea or after trial on the merits.

Copy—an accurate representation, however made. When necessary and feasible, includes a copy by handwriting.

Counseling—actions designed to advise subordinates of their errors and specific ways to improve. Directly or indirectly advising or encouraging another to commit an offense. [LCMJ Article 77.]

Court-Martial—a military tribunal composed of one or more eligible members of the armed forces (the number depending on the type of court), the functions of which are to decide whether a person subject to military law has committed a violation of the LCMJ, and, if so, to adjudge an appropriate punishment therefore. Includes:

- a. the military judge and members of a general court-martial;
- b. the military judge when a session of a special court-martial is conducted;
- c. the summary court-martial officer. [LCMJ Articles 18-20.]

Court-Martial Orders—either a "Convening Order" or a "Promulgating Order." See respective definitions.

Court of Inquiry—the most formal fact-finding body convened in the Military Department, governed by LCMJ Article 135.

Credibility—worthiness of belief.

Culpable—deserving blame.

Custody—that restraint of free movement which is imposed by lawful apprehension.

Custom—a practice which: has been long continued; is certain or uniform; is compulsory, consistent, general, and known; and is not in opposition to the terms and provisions of a statute or lawful regulation or order.

Dangerous Weapon—a weapon used in a manner likely to produce death or grievous bodily harm.

Days—when a period of time is expressed in a number of days, the period shall be in calendar days, unless otherwise specified. Unless otherwise specified, the date on which the period begins shall not count, but the date on which the period ends shall count as one day.

Defendant—see *Accused*.

Defense Counsel—a commissioned officer of the Louisiana National Guard, certified and detailed by the SJA to represent an accused at a special/general courts-martial. Such military counsel will be provided to the accused without expense. The term may also refer to "Individual Civilian Counsel" retained by an accused to defend him.

Deferment of Confinement—a postponement of the running and service of a sentence to confinement.

Deposition—the testimony of a witness taken out of court, reduced to writing, under oath or affirmation, before a person empowered to administer oaths, in answer to interrogatories (questions) and cross-interrogatories

submitted by the party desiring the deposition and the opposite party, or based on oral examination by counsel for accused and the prosecution.

Design—specifically intended; inferred from conduct so shockingly and grossly devoid of care as to leave room for no reasonable inference but that the result was contemplated as a probable result of the course of conduct followed.

Destroyed—not completely demolished or annihilated, but only sufficiently injured to be useless for the purpose for which it was intended. [LCMJ Article 108.]

Detail—order to a person to perform a specific temporary duty.

Detention—the imposition of custody by competent authority, pending disposition of offense(s) for a period no longer than 24 hours. [See LCMJ Article 7(A) and 9(A) and definitions of Apprehension and Arrest.]

Discharge—complete severance from all military status gained by the enlistment or induction concerned.

Dishonorable Discharge—the most severe punitive discharge, reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized by the civil law as felonies, or of offenses of military nature requiring severe punishment.

Dominion—control of property; possession of property with the ability to exercise control over it.

Dual Offense—conduct that constitutes an offense punishable under both civilian criminal laws and the LCMJ.

Due Process—a course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights, such as exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe.

Duty Status—duty in the National Guard under an order issued by authority of law, and includes travel to and from such duty. [LCMJ Article 1.]

Elements—the essential ingredients of an offense; the acts or omissions which form the basis of any particular offense. Listed in the LCMJ, Annotated (Yellow Tab of Louisiana Military Justice Law Manual) Part IV of the Manual for Courts-Martial.

Enlisted Member—a person in an enlisted grade. LCMJ Article 1.

Evidence—information admissible before a court of law which tends to prove or disprove any matter in question or to influence belief respecting it.

Exigent Circumstances—circumstances calling for immediate action or remedy, as in imperative need to search when no time exists to obtain a search warrant. [See M.R.E.. 315(g), 316(d)(4)(B), and R.C.M. 302(e)(B).]

Felony—under Louisiana law, an offense punishable by death or imprisonment at hard labor [La. C.Cr.P. Article 933; See also, R.S. 14:2, and the definition of Misdemeanor.]

Financial Liability—personal, joint, or corporate statutory obligation to reimburse the Louisiana Military Department or the U.S. Government for Government property lost, damaged, or destroyed because of negligence or misconduct, including wrongful appropriation. [See AR 735-5.]

Fine—punishment that makes the accused liable to the State of Louisiana for a specified amount of money.

Forfeiture of Pay—punishment that deprives the accused of all or part of his future pay.

Formal Proceedings—non-judicial Punishment proceedings that are accompanied by the full procedural and substantive requirements of LCMJ Article 15, this Regulation, and other published guidance.

Former Jeopardy—the rule of law that no person shall be tried for the same offense by the same sovereign a second time without his consent. Known also as "double jeopardy." [LCMJ Article 44.]

General Court-Martial—a military tribunal comprised of (copy from LCMJ) whose function is to decide whether a member subject to the LCMJ has committed a violation of that Code and, if so, to adjudge punishment therefore. Also known as "GCM."

Grade—a step or degree, in a graduated scale of office or military rank that is established and designated as a grade by law or regulation. LCMJ Article 1.

Inference—a deduction based upon reason from a fact or facts proved.

Judge Advocate—a commissioned officer of the Judge Advocate General's Corps of the U.S. Army, Air Force, Navy, Marine Corps, or Coast Guard.

Jurisdiction—the power of a court to hear and decide a case and to impose any appropriate and lawful punishment.

Knowingly—with knowledge; consciously, intelligently.

Lesser Included Offense—an offense necessarily included in the offense charged; an offense containing some, but not all, of the elements of the offense charged, so that, if one or more of the elements of the offense charged is not proved, the evidence may still support a finding of guilty of the included offense.

Magistrate—a Judge Advocate empowered to perform judicial functions such as issuing search warrants. Also includes a U.S. Magistrate as defined in 28 U.S.C. Article 631 and following.

Matter in Aggravation—any circumstance attending the commission of a crime which increases its enormity.

Matter in Extenuation—any circumstance serving to explain the commission of the offense, including the reasons that actuated the accused, but not extending to a legal justification.

Members—the members of a court-martial are the voting members detained by the convening authority. As used in this regulation, "member" also may refer to a Servicemember, Servicemember, Soldier or Airman.

Mental Responsibility—the concept that a person is not responsible for criminal conduct if at the time of such conduct as a result of a mental disease or defect he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

Military Court—a court-martial or court of inquiry.

Military Judge—a Judge Advocate who has been certified by TJAG or the SJA as qualified to preside over GCM's and/or SPCM's in accordance with LCMJ Article 26. LCMJ Article 1.

Misdemeanor—offense other than a felony, including ordinance violation that provides a penal sanction [La. C.Cr.P. Article 933.]

Mistrial—the situation existing when it becomes apparent that either party cannot receive a fair and impartial hearing before the sitting tribunal.

Mitigation—a reduction in either the quantity or quality of a punishment appropriate because of an accused's subsequent good conduct or disproportionateness of an original sentence.

Motion to Dismiss—a motion raising any defense or objection in bar or trial.

National Guard—the Louisiana Army and Air National Guard.

Neglect—omission or failure to do an act or perform a duty due to want of due care or attention.

Negligence—the omission to do something which a reasonable person, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent person would not do; the absence of due care; the legal standard that defines what would have been done by a reasonable, prudent person in the same or similar circumstances; as used in the LCMJ, the failure to exercise the care, prudence, or attention to duties which the interests of the Government require to be exercised by a prudent and reasonable person under the circumstances.

Non-Judicial Punishment—also known as "Article 15." Disciplinary punishment levied under LCMJ Article 15 for minor offenses, without the intervention of a court-martial. See Chapter 4.

Oath—a solemn declaration to testify truthfully, administered in a form calculated to awaken the conscience and impress the mind with the duty to so do. Includes "Affirmation."

On Duty—as used in LCMJ Article 112, the exercise of duties of routine or detain in garrison, at a station, or in the field. Does not relate to those periods when, no duty being required of them by order regulations, officers and enlisted persons occupy the status of leisure known as "off duty" or on "liberty."

Party—the accused and any defense or associate or assistant defense counsel and agents of the defense counsel when acting on behalf of the accused with respect to the court-martial in question. Any trial or assistant trial counsel representing the government, and any agents of the trial counsel with respect to the court-martial in question.

Performance Fiche—that portion of the Official Military Personnel File (OMPF) that is routinely used by career managers and selection boards for the purpose of assignment, promotion, and schooling selection. See also Restricted Fiche.

Pleading—the written formal indictment by which an accused is charged with an offense; in military law, the pleadings are called charges and specifications.

Possession—physical control over an item of property.

Preferral—the act of signing and swearing to court-martial charges.

Presumption—a justifiable inference; a well-recognized example of the use of circumstantial evidence, the weight or effect of which should be measured only in terms of its logical value.

Principal—one who aids, abets, counsels, commands, or procures another to commit an offense which is subsequently perpetrated in consequence of such counsel, command or procuring, whether he is present or absent at the commission of the offense; The perpetrator of an offense. [LCMJ Article 78.]

Private Dwelling—a servicemember's dwelling, on or off military premises, such as a single family house or apartment. The quarters may be owned, leased, rented by the servicemember, or assigned, and may be occupies on a temporary or permanent basis. It does not include living areas in military barracks, aircraft, vehicles, tents, bunkers, field encampments, and similar places, whether or not subdivided into individual units.

Probable Cause—prerequisite for a valid search and seizure or arrest. It consists of reliable facts indicating to a reasonable person the probability that a crime has been committed and the person in question committed it or that evidence of a crime is located in the place to be searched.

Procedural Law—the rules of pleading and practice by which rights are accorded and enforced.

Promulgating Orders—an order issued by the Convening Authority publishing the result of a court-martial and the convening authority's action and any later action taken of the case. Not required for Summary Courts-Martial.

Punitive Articles—LCMJ Articles 77 through 134, which generally tract the corresponding UCMJ Articles and state how they may define the conduct made criminal.

Punitive Discharge—a Bad Conduct Discharge (BCD) or a Dishonorable Discharge (DD) from military service.

Rank—the order of precedence among members of the Louisiana National Guard. LCMJ Article 1.

Redress—under LCMJ Article 138, authorized action by any officer in the complainant's chain of command to effect the revocation of a previous official action or otherwise to restore to the complainant any rights, privileges, property, or status lost as a result of a wrong.

Referral of Charges—the order of a convening authority that charges against an accused will be tried by a specified court-martial.

Remission—the cancellation of any portion of the unexecuted punishment.

Reprimand—an act of formal censure that reproves or rebukes an offender for misconduct; a reproof, rebuke, censure, strong criticism, or "chewing out" for failing to comply with the established standard. May be oral or written, but usually written.

Request for Redress—under LCMJ Article 138, the complainant's written request directed to the commanding officer whom he believes has committed the wrong. See Paragraph 9-4.

Respondent—the one against whom an Administrative Discharge Board action has been initiated. Under LCMJ Article 138, a commanding officer against whom an Article 138 complaint has been made.

Restricted Fiche—that portion of the Official Military Personnel File (OMPF) that contains information not normally viewed by career managers or selection boards except as provided in AR 640-10 or specified in the Secretary of Army's written instructions to the selection board. See also Performance Fiche.

Restriction in Lieu of Arrest—moral restraint, less severe than arrest, imposed upon a person by oral or written orders, limiting him or her to specified areas of a military command, with the further provision that he or she will participate in all military duties and activities of the organization while under such restriction.

Revision—a procedure to correct an apparent error or omission or improper or inconsistent action of a court-martial with respect to a finding or a sentence.

Self-Incrimination—the giving of evidence against oneself which tends to establish guilt of an offense.

Separation—an all-inclusive term applied to personnel actions resulting from release from active duty, discharge, retirement, dropped from the rolls, release from military control or personnel without a military status or death.

Setting Aside and Restoration—action in which the punishment or any part or amount, whether executed or unexecuted, is set aside and any rights, privileges, or property affected by the portion of the punishment set aside are restored based on finding of "clear injustice."

Special Court-Martial—a military tribunal comprised of (copy from LCMJ) whose function is to decide whether a member subject to the LCMJ has committed a violation of that Code and, if so, to adjudge punishment therefore. Also known as "SPCM."

Specification—a formal statement of specific acts and circumstances relied upon as constituting the offense charged. See also, Charge.

State—the State of Louisiana. LCMJ Article 1(13).

State Judge Advocate—the Judge Advocate responsible for supervising the administration of military justice in the Louisiana National Guard, and designated as the principal legal advisor to TAG. Also known as "SJA."

State Military Forces—the National Guard of the State, as defined in 32 U.S.C. Section 101 , , and any other military forces organized under the laws of the state, when not in a status subjecting them to jurisdiction under Chapter 47 of Title 10, U.S.C. (LCMJ Article 1).

Statute of Limitations—the rule of law which establishes the time within which an accused must be charged with an offense. Synonymous with Prescription.

Substantive Law—that portion of the body of law which contains rights and duties and regulations of the government, as distinguished from Procedural Law, which is that part containing the rules and remedies by which the substantive law is administered.

Superior Commissioned Officer—a commissioned officer superior in rank or command. [LCMJ Article 1.] Under LCMJ Article 138, a commissioned officer in the complainant's current chain of command that is senior to the complainant in grade, rank, or position. [See paragraph 9-5.]

Supplementary Action—in Non-judicial Punishment proceedings, any action taken by an appropriate authority to suspend, vacate, mitigate, remit, or set aside a punishment (except punishment imposed under summarized proceedings after action has been taken on an appeal or DA Form 2627 has been distributed.

Suspension—to hold a punishment in abeyance and not put it into effect for a specified period of time, resulting in a probationary period during which time the Servicemember may demonstrate his good conduct and efficiency.

Trial on the Merits—trial on the issue of guilt or innocence.

Usage—a general habit, mode, or course of procedure.

Unlawful Command Influence—improper attempts by the convening authority to affect the outcome of a court-martial. Each commander is vested by law with the authority and sole discretion to take - or decline to take - action under the LCMJ in cases arising in his command, unless a superior commander has restricted or withheld the authority to act. Any unauthorized interference by superior authority with the free and independent exercise of this power is called "unlawful command influence" and is itself punishable under the Code.

Vacation of Suspension—termination of a period of probation under a suspended sentence so that a Servicemember's original punishment may be effectuated.

Willful—deliberate, voluntary, and intentional, as distinguished from acts committed through inadvertence, accident, or ordinary negligence.

Wrong—under LCMJ Article 138, a discretionary act or omission by a commanding officer, under color of Federal or State military authority, which adversely affects the complainant personally and which is:

- a. in violation of law or regulation;
- b. beyond the legitimate authority of that commanding officer;
- c. arbitrary, capricious, or an abuse of discretion; or
- d. materially unfair.

Wrongful—contrary to law, regulation, lawful order or custom.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2420 (November 2009).

§914. Nonjudicial Punishment Guide—Appendix

[General Note to Commander: This guide is designed to ensure that the proceedings comply with all legal requirements. It contemplates a three-step process, conducted in the presence of the member, consisting of notification, hearing (that may be omitted if the member admits guilt), and imposition of punishment (if the findings result in a determination of guilt). It is not the purpose of this guide to answer all questions which may arise during an Article 15 proceedings. When this guide, Chapter 5 of the LAARNG Regulation 27-10/LA ANG Regulation 111-1, Chapter 3 of AR 27-10, and other legal materials available fail to provide sufficient information concerning law or procedure, the administering Commander should seek advice on these matters from a judge advocate. The SCM should examine the format for record of trial located at Figures 7-1 and 7-2 of LAARNG Regulation 27-10/LA ANG Regulation 111-1. It may be useful as a checklist during the proceedings to ensure proper preparation after trial. The Commander should become familiar with this guide before using it. Instructions for the Commander are contained in brackets, and should not be read aloud. Language in parentheses reflects optional or alternative language. The Commander should read the appropriate language aloud].

Section 1 - Notification

[If the notification of punishment is to be accomplished by other than the imposing commander, the procedures under this

provision should be appropriately modified (see note 10d, below)].

CO: As your commander, I have disciplinary powers under Article 15 of the LCMJ. I have received a report that you violated the Louisiana Code, and I am now considering imposing nonjudicial punishment. This is not a formal trial like a court-martial. As a record of these proceedings I will use DA Form 2627. I now hand you this form. Read items 1 and 2. Item 1 states the offense(s) you are reported to have committed and item 2 lists the rights you have in these proceedings. Under the provisions of Article 31 of the LCMJ, you are not required to make any statement or provide any information concerning the alleged offense(s). If you do, it may be used against you in these proceedings or in a trial by court-martial. You have the right to consult with a lawyer as stated in item 2.

[Note 1. Wait for the member to read items 1 and 2 of DA Form 2627. Allow him or her to retain copy five of the form until the proceedings are finished and you have either imposed punishment or decided not to impose it].

CO: Do you understand item 1? Do you understand the offense(s) you are reported to have committed?

Member: (Yes) (No)

[Note 2. If the member does not understand the offense(s), explain the offense(s) to him. Reference may be made to the LCMJ and to Part IV of the Manual for Courts-Martial, United States, and Annotated which contains an explanation of each of the punitive articles together with the essential factual elements necessary to constitute the offense].

CO: Do you understand item 2? Do you have any questions about your rights in these proceedings?

Member: (Yes) (No)

[Note 3. If the member does not understand his or her rights, explain them in greater detail. If the member asks a question you cannot answer, recess the proceedings. You can probably find the answer in one of the following sources:

Article 15, LCMJ; Paragraph 3-4 of LAARNG Reg 27-10/LA ANG Reg 111-1;

Part V, MCM. If you cannot find the answer in one of those sources, contact your servicing Staff Judge Advocate Office.].

CO: There are some decisions you have to make: You have to decide whether you want to demand trial by court-martial. If you demand a court-martial these proceedings will stop. I would then have to decide whether to initiate court-martial proceedings against you. If you were to be tried by court-martial for the offense(s) alleged against you, you could be tried by summary court-martial, special court-martial, or general court-martial. If you were to be tried by special or general court-martial, you would be able to be represented by a military lawyer appointed at no expense to you or by a civilian lawyer of your choosing at no expense to the government.

If you do not demand trial by court-martial, you must then decide whether you want to present witnesses or submit other

evidence in "defense," "extenuation," and/or "mitigation." Your decision not to demand trial by court-martial will not be considered as an admission that you committed the offense(s); you can still submit evidence in your behalf.

Evidence in "defense" are facts showing that you did not commit the offense(s) stated in item 1. Even if you cannot present any evidence in "defense," you can still present evidence in "extenuation" or "mitigation."

Evidence in "extenuation" are circumstances surrounding the offense, showing that the offense was not very serious.

Evidence in "mitigation" are facts about you, showing that you are a good Servicemember and that you deserve light punishment.

You can make a statement and request to have a spokesperson appear with you and speak on your behalf. I will interview any available witnesses and consider any evidence you think I should examine.

Finally, you must decide whether you wish to request that the proceedings be open to the public. Do you understand the decisions you have to make?

Member: (Yes) (No)

CO: If you do not demand trial by court-martial and after you have presented your evidence, I am convinced that you committed the offense, I could then punish you. The maximum punishment I could impose on you under Article 15 would be as follows:

[Note 4. Maximum punishments under LCMJ Article 15 varies depending on the level of command imposing punishment and the rank of the member being punished. A ready reference maximum punishments chart is located in LAARNG Reg 27-10/LAANG Reg 11 Explain to the member each punishment which could be imposed in his individual case. It is not necessary for you to read the following statute, however, understand that LCMJ Article 15 authorizes the imposition of any one or more of the following punishments:

Upon officers in his command:

Restriction to certain specified limits, with or without suspension from duty, for not more than fifteen consecutive days;

A fine of not more than one hundred dollars (\$100.00);

If imposed by the governor, the adjutant general, or an officer of a general or flag rank in command;

Arrest in quarters for not more than fifteen consecutive days;

Forfeiture of pay of not more than one hundred dollars (\$100.00);

Upon other military personnel of his command:

Forfeiture of pay of not more than fifty dollars (\$50.00);

Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

Extra duties, including fatigue or other duties, for not more than fourteen (14) consecutive days;

Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) consecutive days;

If imposed by an officer of the grade of major or lieutenant commander, or above (otherwise known as a "Field Grade Article 15");

Forfeiture of pay of not more than one hundred dollars (\$100.00);

Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

Extra duties, including fatigue or other duties, for not more than fourteen (14) consecutive days;

Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen (14) consecutive days;

A fine of not more than twenty-five dollars (\$25.00)]."

CO: You should compare this punishment with the punishment you could receive in a court-martial.

[Note 5. If the member requests to be informed of the maximum court-martial sentence(s), you may advise him that the maximum possible punishments for courts-martial under the LCMJ are as follows:

Summary Courts-Martial (LCMJ Article 20):

Confinement of not more than one week;

Reduction of enlisted personnel to the lowest pay grade;

A fine of not more than \$100 per single offense or, in lieu thereof, confinement of not more than 1 day for each dollar of said fine;

Forfeiture of up to one month pay and allowances;

A reprimand;

Any combination of these punishments.

Special Courts-Martial (LCMJ Article 19):

A fine of not more than \$200 per single offense, or, in lieu thereof, confinement of not more than 1 day for each dollar of said fine;

Forfeiture of pay and allowances;

A reprimand;

Bad conduct or dishonorable discharge;

Reduction of a noncommissioned officer to the ranks;

Confinement of not more than twelve months; or

Any combination of these punishments.

General Courts-Martial (LCMJ Article 18):

A fine of not more than \$1,000 per single offense, or, in lieu thereof, confinement of not more than 1 day for each dollar of said fine;

Forfeiture of pay and allowances;

A reprimand;

Dismissal, bad conduct, or dishonorable discharge;

Reduction of a noncommissioned officer to the ranks;

Confinement of not more than two years; or

Any combination of these punishments.

[You should not inform the member of the particular punishment you may consider imposing until all the evidence has been considered].

CO: As item 2 points out, you have a right to talk to an attorney before you make your decisions. A military lawyer whom you can talk to free of charge is located at _____. Would you like to talk to an attorney before you make your decisions?

Member: (Yes) (No)

[Note 6. If the member desires to talk to an attorney, arrange through the servicing Judge Advocate Office for the consultation to take place. The member should be encouraged to consult the attorney promptly. Inform the member that consultation with an attorney may be by telephone. The member should be advised that he or she is to notify you if any difficulty is encountered in this undertaking].

CO: You now have 48 hours (or 15 days, if in an IDT status) to think about what you should do in this case. You may advise me of your decision at any time within the aforementioned period. If you do not make a timely demand for trial or if you refuse to sign that part of DA Form 2627 indicating your decision on these matters, I can continue with these Article 15 proceedings even without your consent. Do you understand?

Member: (Yes) (No)

CO: You are now dismissed.

[Note 7. At this point, the proceedings should be recessed unless the Servicemember affirmatively indicates that he or she has made a decision and does not want additional time or to consult with an attorney. In the event the member does not make a decision within the specified time or refuses to complete or sign item 3 of DA Form 2627, the imposing commander may continue the proceedings. In such instances, the Servicemember will be informed that failure to complete and sign item 3 may be treated as a voluntary withdrawal of any oral demand for trial. If the Servicemember persists in his refusal and punishment is imposed, in addition to recording the punishment, the following entry will be made in item 4, DA Form 2627: "Advised of his rights, the Servicemember (did not demand trial during the decision period) (refused to (complete)(sign) item 3.)" When you resume the proceedings, begin at item 3, DA Form 2627].

CO: Do you demand trial by court-martial?

Member: (Yes) (No)

[Note 8. If the answer is yes, continue as follows:]

CO: Initial block a, sign and date item 3. Because you have demanded trial by court-martial, these proceedings will stop. I now must decide whether to initiate court-martial proceedings against you. I will notify you when I have reached a decision. You are dismissed.

[Note 9. If the answer is no, continue as follows:]

CO: An open hearing means that the proceeding is open to the public. If the hearing is closed, only you, I, designated members of the chain of command, available witnesses and a spokesperson, if designated, will be present. Do you request an open hearing?

Member: (Yes) (No)

CO: Do you wish to be accompanied by a spokesperson?

Member: (Yes) (No)

CO: Initial block 3b and indicating your decision. Do you want to submit any evidence showing that you did not commit the offense(s), or explaining why you committed the offenses(s), or any other information about yourself that you would like me to know?

Do you wish to have any witnesses testify, including witnesses who would testify about your good past military record or character?

Member: (Yes) (No)

CO: Now initial block 3b indicating your decision, and sign and date the form in the space provided under that item.

[Note 10. a. Wait until the member initials the blocks and signs and dates the form. If the answers to all the questions are no, you may proceed to impose punishment.

If the answer regarding witnesses and evidence is yes, and the member is prepared to present his or her evidence immediately, proceed as follows. Consider the evidence presented. If the evidence persuades you that you should not punish the member, terminate the proceedings, inform the member, and destroy all copies of DA Form 2627. If you are convinced beyond a reasonable doubt that the member committed the offense(s), and deserves punishment, proceed to impose punishment as appropriate.

If the member needs additional time to gather his or her evidence, give the member a reasonable period of time to gather the evidence. Tell the member when the proceedings will resume and recess the proceedings. A reasonable period of time for these purposes would ordinarily be until the following MUTA during IDT periods and would vary depending on circumstances during AT periods. Consult your servicing Judge Advocate if you have questions on this subject.

If someone else conducted the notification proceedings, the imposing commander should conduct the remainder of the proceedings. When you resume the proceedings, consider the

member's evidence. Insure that the member has the opportunity he or she deserves to present any evidence. Ask the member, "Do you have any further evidence to present?"

If the evidence persuades you that you should not punish the member, terminate the proceedings, inform the member of your decision, and destroy all copies of DA Form 2627. If you are still convinced that the member committed the offense(s) and deserves to be punished, impose punishment as appropriate].

Section 2 - Imposition of Punishment

CO: I have considered all the evidence. I am convinced that you committed the offense(s) of _____. I impose the following punishment(s): _____ [Announce punishment.]

[Note 11. After you have imposed punishment, complete items 4, 5, and 6 of DA Form 2627, and sign the blank below item 6].

Section 3 - Appellate Advice

[Note 12. Hand the DA Form 2627 to the member]

CO: Read item 4 which lists the punishment I have just imposed on you. Now read item 6 which points out that you have a right to appeal this punishment to (title and organization of next superior authority under Article 15e). You can appeal if you believe that you should not have been punished at all, or that the punishment is too severe. Any appeal should be submitted within 5 calendar days, excluding today. An appeal submitted after that time may be rejected. Even if you appeal, the punishment is effective today (unless the imposing commander sets another date). Once you submit your appeal, it must be acted upon by (title and organization of next superior) within 5 calendar days, excluding the day of submission. Otherwise, any punishment involving deprivation of liberty (restriction or extra duties), at your request, will be interrupted pending the decision on the appeal. Do you understand your right to appeal?

Member: (Yes) (No)

CO: Do you desire to appeal?

Member: (Yes) (No)

[Note 13. If the answer is yes, go to Note 15. If the answer is no, continue as follows:]

CO: If you do not want to appeal, initial block a in item 7 and sign the blank below item 7.

[Note 14. Now give the member detailed orders as to how you want him or her to carry out the punishments].

CO: You are dismissed.

[Note 15. If the answer is yes, continue as follows:]

CO: Do you want to submit any additional matters to be considered in an appeal?

Member: (Yes) (No)

[Note 16. If the answer is yes, go to Note 17. If the answer is no, continue as follows:]

CO: Initial block b in item 7 and sign the blank below item 7. I will notify you when I learn what action has been taken on your appeal. You are dismissed.

[Note 17. If the answer is yes, continue as follows:]

CO: If you intend to appeal and do not have the additional matters with you, item 7 will not be completed until after you have obtained all the additional material you wish to have considered on appeal. When you have obtained this material, return with it by _____(specify a date 5 calendar days from the date punishment is imposed) and complete item 7, by initialing the box and signing the blank below. After you complete item 7, I will send the DA Form 2627 and the additional matters you submit to (title and organization of next superior authority). Remember that the punishment will not be delayed (unless the imposing commander sets another date). Do you understand?

Member: (Yes) (No)

CO: You are dismissed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2425 (November 2009).

§915. Summary Courts-Martial Guide—Appendix

ADMINISTRATION OF MILITARY JUSTICE

SUMMARY COURTS-MARTIAL GUIDE

Preliminary Proceedings

Identity of SCM Officer

SCM:

I am _____ have been detailed to conduct a summary court-martial by Summary Court-Martial Convening Order Number _____, Headquarters, _____, dated _____.

Referral of charges to trial

SCM:

Charges against you have been referred to me for trial by summary court-martial _____, Commander, _____ on _____.

Note 1. Hand copy of charge sheet to the accused.

I suggest that you keep this copy of the charge sheet and refer to it during the trial. The charges are signed by _____, a person subject to the Louisiana Code of Military Justice, as accuser, and are properly sworn to before a commissioned officer of the armed forces authorized to administer oaths. The charges allege, in general,

Violation of Article _____, _____

Violation of Article _____, _____

Violation of Article _____, _____

Violation of Article _____, _____

I am now going to tell you about certain rights you have in this trial. You should carefully consider each explanation because you will soon have to decide whether to object to trial by summary court-martial. Until I have completed my explanation, do not say anything except to answer the specific questions which I ask you. Do you understand that?

ACCUSED:

No or Yes, Sir.

Duties of SCM

SCM:

As summary court-martial officer, it is my duty to obtain and examine all the evidence concerning any offense(s) to which you plead not guilty, and to thoroughly and impartially inquire into both sides of the matter. I will call witnesses for the prosecution and question them, and I will help you in cross-examining those witnesses. I will help you obtain evidence and present the defense. This means that one of my duties is to help you present your side of the case. You may also represent yourself, and if you do, it is my duty to help you. You are presumed to be innocent until your guilt has been proved by legal and competent evidence beyond a reasonable doubt. If you are found guilty of an offense, it is also my duty to consider matters which might affect the sentence, and then to adjudge an appropriate sentence. Do you understand that?

ACC:

No or Yes, Sir.

Right to object to SCM

SCM:

You have the absolute right to object to trial by summary court-martial.

If you object the appropriate authority will decide how to dispose of the case. The charges may be referred to a special or general court-martial, or they may be dismissed, or the offenses charged may be disposed of by nonjudicial punishment [if not previously offered and refused] or by the imposition of non-punitive administrative measures. [See R.C.M. 306.]

Do you understand that?

ACC:

No or Yes, Sir.

Right to inspect allied papers and personal records

SCM:

You may inspect the allied papers and personnel records.

Hand those documents which are available to the accused for examination in your presence. You may have time to examine these if you wish.

Witnesses and other evidence for the government

SCM:

The following witnesses will probably appear and testify against you:

The following documents and physical evidence will probably be introduced:

Right to cross-examine

After these witnesses have testified in response to my questions, you may cross-examine them. If you prefer, I will do this for you after you inform me of the matters about which you want the witness to be questioned.

Do you understand that?

ACC:

No or Yes, Sir.

Right to present evidence

SCM:

You also have the right to call witnesses and present other evidence.

This evidence may concern any or all of the charges. (I have arranged to have the following witnesses for you present at the trial.) I will arrange for the attendance of other witnesses and the production of other evidence requested by you. I will help you in any way possible. Do you understand that?

ACC:

No or Yes, Sir.

Evidence to be considered

SCM:

In deciding this case, I will consider only evidence introduced during the trial. I will not consider any other information, including any statements you have made to me, which is not introduced in accordance with the Military Rules of Evidence during the court-martial. Do you understand that?

ACC:

No or Yes, Sir.

Right to remain silent

SCM:

You have the absolute right during this trial to choose not to testify and to say nothing at all about the offense(s) with which you are charged. If you do not testify, I will not hold it against you in any way. I will not consider it as an admission that you are guilty. If you remain silent, I am not permitted to question you about the offense(s).

Right to testify concerning the offense(s)

However, if you choose, you may be sworn and testify as a witness concerning the offense(s) charged against you. If you do that, I will consider your testimony just like the testimony of any other witness.

SCM:

If you decide to testify, you may limit your testimony to any particular offense charged against you and not testify concerning any other offense(s) charged against you. If you do this, I may question you about the whole subject of the offense about which you testify, but I may not question you about any offense(s) concerning which you do not testify. Do you understand that?

ACC:

No or Yes, Sir.

Right to testify, remain silent make an unsworn statement in extenuation and mitigation

SCM:

In addition, if you are found guilty of an offense, you will have the right to testify under oath concerning matters regarding an appropriate sentence. You may, however, remain silent, and I will not hold your silence against you in any way. You may, if you wish, make an unsworn statement about such matters. This statement may be oral, in writing, or both. If you testify, I may cross-examine you. If you make an unsworn statement, however, I am not permitted to question you about it, but I may receive evidence to contradict anything contained in the statement. Do you understand that?

ACC:

No or Yes, Sir.

Maximum Punishment

SCM:

If I find you guilty (of the offense) (of any of the offenses charged), the maximum sentence which I am authorized to impose is:

Confinement of not more than one week;

Reduction of enlisted personnel to the lowest grade;

A fine of not more than \$100.00 or, in lieu thereof, confinement for not more than one day for each dollar of the authorized fine or combination thereof;

Forfeiture of up to one month pay and allowances;

A reprimand;

Any combination of these punishments.

SCM:

Do you understand the maximum punishment which this court-martial is authorized to adjudge?

ACC:

No or Yes, Sir.

Plea Options

SCM:

You may plead not guilty or guilty to each offense with which you are charged. You have an absolute right to plead not guilty and to require that your guilt be proved beyond a reasonable doubt before you can be found guilty. You have the right to plead not guilty even if you believe you are guilty. Do you understand that?

ACC:

No or Yes, Sir.

SCM:

If you believe you are guilty of an offense, you may, but are not required to, plead guilty to that offense. If you plead guilty to an offense, you are admitting that you committed that offense, and this court-martial could find you guilty of that offense without hearing any evidence, and could sentence you to the maximum penalty I explained to you before. Do you understand that?

ACC:

No or Yes, Sir.

SCM:

Do you need more time to consider whether to object to trial by summary court-martial or to prepare for trial?

ACC:

No or Yes, Sir.

SCM:

[If time is requested or otherwise appropriate.] We will convene the court-martial at _____. When we convene, I will ask you whether you object to trial by summary court-martial. If you do not object, I will then ask for your pleas to the charge(s) and specification(s), and for you to make any motions you may have.

Trial Procedure

Convene

SCM:

This summary court-martial is now in session.

Objection or consent to trial by SCM

SCM:

Do you object to trial by summary court-martial?

ACC:

No or Yes, Sir.

[Note 4. If there is an objection, adjourn the court-martial and return the file to the convening authority. If the accused does not object, proceed as follows. The accused may be asked to initial the notation on the record of trial that the accused did or did not object to trial by summary court-martial. This is not required, however.]

Reading of the charges

SCM: Look at the charge sheet. Have you read the charge(s) and specification(s)?

ACC:

No or Yes, Sir.

SCM:

Do you want me to read them to you?

ACC:

No or Yes, Sir.

[If accused requests, read the charge(s) and specification(s).]

Arraignment

SCM:

Before you plead to the offenses, if you have any motion to dismiss (the) (any) charge or specification, or for other relief, you should make it now.

ACC:

No or Yes, Sir.

[Note 5. Motions. If the accused makes a motion to dismiss or to grant other relief, or such a motion is raised by the summary court-martial, do not proceed with the trial until the motions have been decided. See R.C.M. 905-907, and R.C.M. 1304(b)(2)(c). After any motions have been disposed of and if termination of the trial has not resulted, have the accused enter pleas and proceed as indicated below.]

Pleas

ACC:

I plead: _____.

[Note 6. If the accused refuses to plead to any offense charged, enter pleas of not guilty. If the accused refuses to enter any plea, evidence must be presented to establish that the accused is the person named in the specification(s) and is subject to court-martial jurisdiction. See R.C.M. 202, 1301(c).]

[Note 7. If the accused pleads not guilty to all offenses charged, proceed to the section entitled "Procedures-Not Guilty Pleas."]

[Note 8. If the accused pleads guilty to one or more offenses, proceed as follows.]

Procedures - guilty pleas

SCM

I will now explain the meaning and effect of your pleas, and question you so that I can be sure you understand. Refer to the charge(s) and specification(s). I will not accept your pleas of guilty unless you understand their meaning and effect. You are legally and morally entitled to plead not guilty even though you believe you are guilty, and to require that your guilt be proved beyond a reasonable doubt. A plea of guilty is the strongest form of proof known to the law. On your pleas of guilty alone, without receiving any evidence, I can find you guilty of the offense(s) to which you have pleaded guilty. I will not accept your pleas unless you realize that by your pleas you admit every element of the offense(s) to which you have pleaded guilty, and that you are pleading guilty because

you really are guilty. If you are not convinced that you are in fact guilty, you should not allow anything to influence you to plead guilty. Do you understand that?

ACC:

No or Yes, Sir.

SCM:

Do you have any questions?

ACC:

No or Yes, Sir.

SCM:

By your pleas of guilty you give up three very important rights. (You keep these rights with respect to any offense(s) to which you have pleaded not guilty.) The rights which you give up when you plead guilty are:

First, the right against self-incrimination. This means you give up the right to say nothing at all about (this) (these) offense(s) to which you have pleaded guilty. In a few minutes I will ask you questions about (this) (these) offense(s), and you will have to answer my questions for me to accept your pleas of guilty.

Second, the right to a trial of the facts by this court-martial. This means you give up the right to have me decide whether you are guilty based upon the evidence which would be presented.

Third, the right to be confronted by and to cross-examine any witnesses against you. This means you give up the right to have any witnesses against you appear, be sworn and testify, and to cross-examine them under oath.

Do you understand these rights?

ACC:

No or Yes, Sir.

SCM:

Do you understand that by pleading guilty you give up these rights?

ACC:

No or Yes, Sir.

SCM:

On your pleas of guilty alone you could be sentenced to the maximum sentence allowed.

[Note 9. Re-read the appropriate sentencing section above unless the summary court-martial is a rehearing or new or other trial, in which case see R.C.M. 810(d).]

SCM:

Do you have any questions about the sentence which could be imposed as a result of your pleas of guilty?

ACC:

No or Yes, Sir.

SCM:

Has anyone made any threat or tried in any other way to force you to plead guilty?

ACC:

No or Yes, Sir.

Pretrial Agreement

SCM:

Are you pleading guilty because of any promises or understandings between you and the convening authority or anyone else?

ACC:

No or Yes, Sir.

[Note 10. If the accused answers yes, the summary court-martial must inquire into the terms of such promises or understandings in accordance with Paragraph 7-21 of this Regulation. See also Note 27 of Appendix C, (SPCM Guide) and R.C.M. 910.]

SCM:

The following elements state what would have to be proved beyond a reasonable doubt before the court-martial could find you guilty if you had pleaded not guilty. As I read each of these elements to you, ask yourself whether each is true and whether you want to admit that each is true, and then be prepared to discuss each of these elements with me when I have finished.

The elements of the offense(s) which your pleas of guilty admit are

Article _____:

Article _____:

Article _____:

[Note 12. Read the elements of the offense(s) from the appropriate punitive article in the LCMJ Annotated..]

SCM:

Do you understand each of the elements of the offense(s)?

ACC:

No or Yes, Sir.

SCM:

Do you believe, and admit, that taken together these elements correctly describe what you did?

ACC:

No or Yes, Sir.

[Note 13. The summary court-martial should now question the accused about the circumstances of the offense(s) to which the accused has pleaded guilty. The accused will be placed under oath for this purpose. See oath below. The purpose of these questions is to develop the circumstances in the accused's own words, so that the summary court-martial may determine whether each element of the offense(s) is established.]

Oath to accused for guilty plea inquiry

SCM:

Do you (swear) (affirm) that the statements you are about to make shall be the truth, the whole truth, and nothing but the truth (so help you God)?

ACC:

No or Yes, Sir.

SCM:

Do you have any questions about the meaning and effect of your pleas of guilty?

ACC:

No or Yes, Sir.

SCM:

Do you believe that you understand the meaning and effect of your pleas of guilty?

ACC:

No or Yes, Sir.

[Note 14. Determination of Providence of Pleas of Guilty. Pleas of guilty may not be accepted unless the summary court-martial finds that they are made voluntarily and with understanding of their meaning and effect, and that the accused has knowingly, intelligently, and consciously waived the rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses. Pleas of guilty may be improvident when the accused makes statements at any time during the trial which indicate that there may be a defense to the offense(s), or which are otherwise inconsistent with an admission of guilt. If the accused makes such statements and persists in them after questioning, then the summary court-martial must reject the accused's guilty pleas and enter pleas of not guilty for the accused. Turn to the section entitled "Procedures-Not Guilty Pleas" and continue as indicated. If (the) (any of the) accused's pleas of guilty are found provident, the summary court-martial should announce findings as follows.]

Acceptance of guilty pleas

SCM:

I find that the pleas of guilty are made voluntarily and with understanding of their meaning and effect. I further specifically find that you have knowingly, intelligently, and consciously waived your rights against self-incrimination, to a trial of the facts by a court-martial, and to be confronted by the witnesses against you. Accordingly, I find the pleas are provident, and I accept them. However, you may ask to take back your guilty pleas at any time before the sentence is announced. If you have a sound reason for your request, I will grant it. Do you understand that?

ACC:

No or Yes, Sir.

[Note 15. If no pleas of not guilty remain, go to note 24. If the accused has changed pleas of guilty to not guilty, if the summary court-martial has entered pleas of not guilty to any charge(s) and specification(s), or if the accused has pleaded not guilty to any of the offenses or pleaded guilty to a lesser included offense, proceed as follows.]

Procedures – Not guilty pleas

Witnesses for the accused

SCM:

If there are witnesses you would like to call to testify for you, give me the name, rank, and organization or address of each,

and the reason you think they should be here, and I will arrange to have them present if their testimony would be material. Do you want to call witnesses?

ACC:

No or Yes, Sir.

Presentation of Evidence

[Note 16. The summary court-martial should estimate the length of the case and arrange for the attendance of witnesses. The prosecution evidence should be presented before evidence for the defense.]

Calling witnesses

SCM:

I call as a witness _____.

Witness oath

SCM:

[To the witness, both standing] Raise your right hand.

Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth,(so help you God)? [Do not use the phrase, "so help you God," if the witness prefers to affirm.]

WIT:

No or Yes, Sir.

SCM:

Be seated. State your full name, rank organization, and armed force ([or if a civilian witness] full name, address, and occupation.)

[Note 17. The summary court-martial should question each witness concerning the alleged offense(s). After direct examination of each witness, the accused must be given an opportunity to cross-examine. If the accused declines to cross-examine the witness, the summary court-martial should ask any questions that it feels the accused should have asked. If cross-examination occurs, the summary court-martial may ask questions on redirect examination and the accused may ask further questions in recross-examination.]

[Note 18. After each witness has testified, instruct the witness as follows.]

SCM:

Do not discuss this case with anyone except the accused, counsel, or myself until after the trial is over. Should anyone else attempt to discuss this case with you, refuse to do so and report the attempt to me immediately. Do you understand that?

WITNESS:

YES or NO Sir

SCM:

[To the witness] You are excused.

[Note 19. Recalling witnesses. Witnesses may be recalled if necessary. A witness who is recalled is still under oath and should be so reminded.]

[Note 20. After all witnesses against the accused have been called and any other evidence has been presented, the summary court-martial will announce the following.]

SCM:

That completes the evidence against you. I will now consider the evidence in your favor.

[Note 21. Presentation of Defense Case. Witnesses for the accused should now be called to testify and other evidence should be presented. Before the defense case is terminated the summary court-martial should ask the accused if there are other matters the accused wants presented. If the accused has not testified, the summary court-martial should remind the accused of the right to testify or to remain silent.]

Closing argument

SCM:

I have now heard all of the evidence. You may make an argument on this evidence before I decide whether you are guilty or not guilty.

Deliberation and Findings

[Note 22. The court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

SCM:

The court-martial is closed so that I may review the evidence. Wait outside the courtroom until I recall you.

[Note 23. The summary court-martial should review the evidence and applicable law. It must acquit the accused unless it is convinced beyond a reasonable doubt by the evidence it has received in court in the presence of the accused that each element of the alleged offense(s) has been proved beyond a reasonable doubt. See R.C.M. 918. It may not consider any facts which were not admitted into evidence, such as a confession or admission of the accused which was excluded because it was taken in violation of M.R.E.. 304.]

[Note 24. Announcing the findings. The summary court-martial should recall the accused, who will stand before the court-martial when findings are announced. All findings including any findings of guilty resulting from guilty pleas, should be announced at this time. The attached Findings form should be used and signed then read aloud when announcing findings.]

[Note 26. Procedure if total acquittal. If the accused has been found not guilty of all charges and specifications, adjourn the court-martial, excuse the accused, complete the record of trial, and return the charge sheet, personnel records, allied papers, and record of trial to the convening authority.]

Sentencing

[Note 27. Procedure if any findings of guilty. If the accused has been found guilty of any offense, proceed as follows.]

Presentence Procedure

SCM:

I will now receive information in order to decide on an appropriate sentence. Look at the information concerning you on the front page of the charge sheet. Is it correct?

ACC:

No or Yes, Sir.

[Note 28. If the accused alleges that any of the information is incorrect, the summary court-martial must determine whether it is correct and correct the charge sheet, if necessary.]

[Note 29. Evidence from the accused's personnel records, including evidence favorable to the accused, should now be received in accordance with R.C.M. 1001(b)(2). These records should be shown to the accused.]

SCM:

Do you know any reason why I should not consider these?

ACC:

No or Yes, Sir.

[Note 30. The summary court-martial shall resolve objections under R.C.M. 1002(b)(2) and the Military Rules of Evidence and then proceed as follows. See also R.C.M. 1001(b)(3), (4), and (5) concerning other evidence which may be introduced.]

Extenuation and mitigation

SCM:

In addition to the information already admitted which is favorable to you, and which I will consider, you may call witnesses who are reasonably available, you may present evidence, and you may make a statement. This information may be to explain the circumstances of the offense(s), including any reasons for committing the offense(s), and to lessen the punishment for the offense(s) regardless of the circumstances. You may show particular acts of good conduct or bravery, and evidence of your reputation in the service for efficiency, fidelity, obedience, temperance, courage, or any other trait desirable in a good Servicemember. You may call available witnesses or you may use letters, affidavits, certificates of military and civil officers, or other similar writings. If you introduce such matters, I may receive written evidence for the purpose of contradicting the matters you presented. If you want me to get some military records that you would otherwise be unable to obtain, give me a list of these documents. If you intend to introduce letters, affidavits, or other documents, but you do not have them, tell me so that I can help you get them. Do you understand that?

ACC:

No or Yes, Sir.

Rights of accused to testify, remain silent, and make an unsworn statement

SCM:

I informed you earlier of your right to testify under oath, to remain silent, and to make an unsworn statement about these matters.

SCM:

Do you understand these rights?

ACC:

No or Yes, Sir.

SCM:

Do you wish to call witnesses or introduce anything in writing?

ACC:

No or Yes, Sir.

[Note 31. If the accused wants the summary court-martial to obtain evidence, arrange to have the evidence produced as soon as practicable.]

[Note 32. The summary court-martial should now receive evidence favorable to the accused. If the accused does not produce evidence, the summary court-martial may do so if there are matters favorable to the accused which should be presented.]

SCM:

Do you wish to testify or make an unsworn statement?

ACC:

No or Yes, Sir.

[Note 33. Questions concerning pleas of guilty. If as a result of matters received on sentencing, including the accused's testimony or an unsworn statement, any matter is disclosed which is inconsistent with the pleas of guilty, the summary court-martial must immediately inform the accused and resolve the matter.]

Argument on sentence

SCM:

You may make an argument on an appropriate sentence. Do you wish to make an argument on an appropriate sentence?

ACC:

No or Yes, Sir.

[Note 34. Deliberations prior to announcing sentence. After receiving all matters relevant to sentencing, the summary court-martial should normally close for deliberations. If the summary court-martial decides to close, proceed as follows.]

Closing the court-martial

SCM:

This court-martial is closed for determination of the sentence. Wait outside the courtroom until I recall you.

[Note 35. Announcing the sentence. The summary court-martial should recall the accused, who will stand before the court-martial when the sentence is announced. The Attached Sentence form should be used and signed then read aloud when announcing sentence.]

Announcement of sentence

SCM:

Please rise.

[Note 36. If the sentence includes confinement, advise the accused as follows.]

SCM:

You have the right to request in writing that _____ [name of convening authority] defer your sentence to confinement. Deferment is not a form of clemency and is not the same as suspension of a sentence. It merely postpones the running of a sentence to confinement.

[Note 37. Whether or not the sentence includes confinement, advise the accused as follows.]

SCM:

You have the right to submit in writing a petition or statement to the convening authority. This statement may include any matters you feel the convening authority should consider, a request for clemency, or both. This statement must be submitted within 7 days, unless you request and convening authority approves an extension of up to 10 days. After the convening authority takes action, your case will be reviewed by a judge advocate for legal error. You may suggest, in writing, legal errors for the judge advocate to consider. If, after final action has been taken in your case, you believe that there has been a legal error, you may request review of your case by the State Judge Advocate of the Louisiana National Guard. Do you understand these rights?

ACC:

No or Yes, Sir.

Adjourning the court-martial

SCM:

This court-martial is adjourned.

[Note 38. Have the Paralegal complete all forms and then the SCM signs. The Paralegal will then ensure that the forms are forwarded appropriately.]

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2428 (November 2009).

§917. Request for Arrest Warrant Packet—Appendix

STATE OF LOUISIANA
Military Department
CHECKLIST FOR ISSUANCE OF ARREST WARRANT

1. _____ Request for Arrest Warrant. [Figure 5-3, LANG 27-10]
2. _____ Properly completed DD Form 458 Charge Sheet. [Figure 5-9 and 5-10, LANG 27-10]
3. _____ Properly completed Arrest Warrant.
4. _____ Written Order to Report.
5. _____ MACOM SJA Endorsement

NOTES

- A. Warrants may only be issued to secure the presence of the accused. Arrest cannot be used as punishment.
- B. Regarding AWOL's, warrants may only be issued if the soldier has been absent for five MUTA's over two consecutive drills. If a soldier is AWOL one drill but reports at the next drill, arrest is not needed to secure the presence of that soldier. Similarly, if the soldier is AWOL six consecutive drill weekends and reports to the seventh drill, the unit should read that soldier his DD Form 458 Charge Sheet and take the necessary action the commander deems appropriate under the LCMJ at that time. It cannot issue an arrest warrant after the soldier has reported, unless the soldier is again absent for five consecutive MUTA's over two drill weekends.
- C. Arrest Warrants cannot authorize detention for more than eight (8) hours unless specifically approved by the State Judge Advocate upon a showing of just cause for such detention time.
- D. Some common mistakes include such simple omissions as the arrestee's physical description and the use of inappropriate arrest warrant forms used for AWOL from Annual Training (which occasionally, depending on the circumstances permit much longer detention) instead of AWOL from drill.

WRITTEN DIRECT ORDER TO
Name and Rank of Arrestee

Upon release on personal recognizance by the law enforcement official, you are directed to report to (*Unit address and phone number*) on the first day following your release no later than 1600 hours. If you fail to report, you will be apprehended again for pretrial confinement.

BY ORDER OF *Commander's Name and Signature*

LANG-XXX *Date*

MEMORANDUM FOR Commander, 256 BCT, ATTN: Staff Judge Advocate

SUBJECT: Request for Arrest Warrant Authority Under the Louisiana Code of Military Justice

1. The undersigned requests authority to arrest the following soldier pursuant to the LCMJ:
 - a. Rank & Name of arrestee: PFC John C. Doe
 - b. Unit address or arrestee: HHC, 256th Infantry, 1806 Surrey Street, Lafayette, LA 70508
 - c. Offense(s) of arrestee: Article 86, LCMJ (AWOL)
 - d. Civilian Employment of arrestee: Student, Part-time at Outback on weekends
2. Justification/necessity for arrest: Soldier has been consistently AWOL from drill and arrest is necessary to secure the soldier's presence. Soldier was AWOL for the following drill dates: 7-8 Nov 99, 1-2 Dec 99, 5-6 Jan 00, 8-9 Feb 00.
3. The unit has attempted to contact the Soldier three times by telephone at the number listed on the Unit's Alert Roster and twice by certified mail but has been unsuccessful securing the presence of the soldier for disposition of the offenses charged.
4. In brief, the arrestee's prior service record is as follows:
 - (a) Is the Guardsman an OIF or OEF veteran?
 - (b) Has the Guardsman experienced any extenuating circumstances or hardship recently or since the unsatisfactory participation?
 - (c) What specific actions has the unit taken to address any concerns or issues that the Guardsman may be experiencing?
 - (d) What type of performance has the Guardsman had during their military career? List both positive accomplishments and prior misconduct.
5. Aggravating, extenuating or mitigating circumstances: Arrestee thought he would lose his job if he went to drill on the drill weekends noted above.
6. If there are any questions, please contact the undersigned at Unit phone number.
7. Encl Requestee's Signature Block
 1. DD Form 458 Charge Sheet
 2. Arrest Warrant
 3. Written Order to Report
 4. SJA Memorandum
 5. Arrest Warrant Checklist

Sample Chart Detailing All Recovery Attempts

Guardsman's Name	Unit	Justification	Status
PV1 Soldier, Sam E.	HSC, 528th EN Bn	PV1 Soldier state to CPT Spurlock that he had some medical documentation to fax to him. CPT Spurlock told the Solider that he needed to report to the Monroe armory NLT 1700 on 3 OCT06. The Soldier stated "I was trying not to hear him" and hung up the phone.	SJA prepared to recommend approval after receiving the Request for Warrant, along with the Soldier's home of record and the Company Commander's Name and Phone Number. 10 OCT 06.
SPC Guy, Good E.	HSC 528th EN Bn	CPT Spurlock explained to SPC Guy that he had been called back to duty and that the National Guard would take care of his medication condition and get him the care he need and also put him orders. CPT Spurlock told SPC Guy to go home and retrieve his gear and report back to the unit NLT 0700 on 7 OCT 06. SPC Guy failed to report in at the time instructed.	SJA Disapproves. SJA Required corrections to the affidavit. We should not issue a warrant unless the Soldier is already on orders. 10 OCT 06.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:11(F).

HISTORICAL NOTE: Promulgated in accordance with the Office of the Governor, State Military Department, LR 35:2435 (November 2009).

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S.49:972.

Written comments may be address to Dirk Thibodeaux, Executive Counsel, Louisiana Military Department, 5445 Point Clair Road, Box 28, Carville, LA 70721, until 4:30 p.m. on September 10, 2009.

Bennett C. Landreneau, MG
Adjutant General

0911#047

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Direct Service Worker Registry Training Curriculum
(LAC 48:I.9215)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.9215 as authorized by R.S. 40:2179-2179.1. 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. Health Standards

Chapter 92. Direct Service Worker Registry

Subchapter B. Training and Competency Requirements

§9215. Training Curriculum

A. - B.3. ...

C. Curriculum Approval. Effective March 1, 2009, licensed providers and other state-approved training entities that wish to offer training for direct service workers, and do not have a training curriculum approved by the department, must use the training curriculum developed by Health Standards. Training curriculums approved by Health Standards prior to March 1, 2009 may continue to be used.

1. To obtain approval to use the Health Standards training curriculum, an entity (provider or school) must submit the following documentation to the Health Standards Section:

- a. the name of the training coordinator and his/her qualifications; and
- b. a list of any other instructors.
- c. Repealed.

2. If a school is applying for approval, it must identify the place(s) used for classroom instruction and clinical experience.

3. If a provider or school that has an approved curriculum ceases to provide training and/or competency evaluations, it must notify the department within 10 days. Prior to resuming the training program and/or competency evaluations, the provider or school must reapply to the department for approval to resume the program.

4. 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), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009).

Alan Levine
Secretary

0911#087

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Facility Need Review—Exception Criteria
for Bed Approval and Home and
Community-Based Service Providers
(LAC 48:I.12501-12505, 12513,
12523, 12527, 12533, and 12541)**

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.12501-12505, 12513, 12527, 12533 12523 and adopted §§12541-12553 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2116. 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 1. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

* * *

Home and Community Based Service (HCBS) Providers—those agencies, institutions, societies, corporations, facilities, person or persons, or any other group intending to provide or providing respite care services, personal care attendant (PCA) services, or supervised independent living (SIL) services, or any combination of services thereof, including respite providers, SIL providers, and PCA providers.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), amended LR 28:2190 (October 2002), amended LR 30:1023 (May 2004), amended LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009).

§12503. General Information

A. The Department of Health and Hospitals will conduct a facility need review (FNR) to determine if there is a need for additional facilities, beds or units to enroll to participate in the Title XIX Program for the following facility types:

- 1. nursing facilities;
- 2. skilled nursing facilities; and
- 3. intermediate care facilities for persons with developmental disabilities.
- 4. Repealed.

B. 42 CFR Part 442.12(d) allows the Medicaid agency to refuse to execute a provider agreement if adequate documentation showing good cause for such refusal has been compiled (i.e., when sufficient beds are available to serve the Title XIX population). The Facility Need Review Program will review applications for additional beds, units and/or facilities to determine whether good cause exists to deny participation in the Title XIX Program to prospective providers of those services subject to the FNR process.

C. The department will also conduct a FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. adult residential care providers or facilities; and
2. home and community-based service providers, as defined under this Chapter.

D. The department shall be responsible for reviewing proposals for facilities, beds, units and agencies submitted by health care providers seeking to be licensed or to participate in the Medicaid Program. The secretary or his designee shall issue a decision of approval or disapproval.

1. The duties of the department under this program include, but are not limited to:

- a. determining the applicability of these provisions to all requests for approval to enroll facilities, beds, or units in the Medicaid Program or to license facilities, units, providers or agencies;
- b. - d. ...

E. No nursing facility, skilled nursing facility, or ICF-DD bed, nor provider units/beds shall be enrolled in the Title XIX Program unless the bed has been approved through the FNR Program. No adult residential care provider or home and community-based services provider may be licensed by the department unless the facility, unit or agency has been approved through the FNR Program.

1. - 4. Repealed.

F. Grandfather Provision. An approval shall be deemed to have been granted under this program without review for NFs, ICFs-DD and/or beds that meet one of the following descriptions:

1. all valid Section 1122 approved health care facilities/beds;
2. all valid approvals for health care facilities/beds issued under the Medicaid Capital Expenditure Review Program prior to the effective date of this program;
3. all valid approvals for health care facilities issued under the Facility Need Review Program; or
4. all nursing facility beds which were enrolled in Medicaid as of January 20, 1991.

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

1. HCBS providers which were licensed by January 31, 2009 or had a completed initial licensing application submitted to the department by June 30, 2008; or
2. existing licensed ICFs-DD that are converting to the proposed Residential Options Waiver.

H. Exemptions from the facility need review process shall be made for:

1. a nursing facility which needs to be replaced as a result of destruction by fire or a natural disaster, such as a hurricane; or

2. a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.

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 21:806 (August 1995), amended LR 25:1250 (July 1999), amended LR 28:2190 (October 2002), LR 30:1023 (May 2004), amended LR 32:845 (May 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2437 (November 2009).

§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. 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 \$10 per bed or unit. The nonrefundable application fee for an HCBS provider shall be a flat fee of \$150. An original and three copies of the application are required for submission.

1. - 3.e.i. ...

ii. acknowledgement that failure to meet the time-frames established in this Chapter will result in automatic expiration of the FNR approval for the ARCP units.

B. - 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, 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).

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

§12513. Alternate Use of Licensed Approved Title XIX Beds

A. - D. ...

E. A nursing facility that has converted beds to alternate use may elect to remove the beds from alternate use and re-license and re-enroll the beds as nursing facility beds. The facility has 120 days from removal from alternate use to re-license and re-enroll the beds. Failure to re-license and re-enroll the beds within 120 days will result in the automatic expiration of FNR approval.

F. The nursing facility beds converted to alternate use shall be used solely for the purpose of providing health care services at a licensed and/or certified facility.

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), LR 34:2617 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2438 (November 2009).

§12523. Home and Community-Based Service Providers

A. No HCBS provider shall be licensed to operate unless the FNR Program has granted an approval for the issuance of an HCBS provider license. Once the FNR Program

approval is granted, an HCBS 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 HCBS providers is the DHH region in which 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 HCBS provider in the 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 recipients' ability to access health 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 HCBS providers in the same geographic location and region servicing the same population; and

b. allegations involving issues of access to health 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 health 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. An HCBS provider undergoing a change of location in the same licensed region 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. An HCBS provider undergoing a change of location outside of the licensed region shall submit a new FNR application and fee and undergo the FNR approval process.

2. An HCBS provider undergoing a change of ownership shall submit a new 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 35:2438 (November 2009).

Subchapter C. Revocation of Facility Need Review Approvals

§12527. General Provisions

A. - C. ...

D. Except as provided in Subchapter E and Subchapter F of this Chapter, approval shall be revoked under the following circumstances:

D.1. - 2. ...

E. Except as provided in Subchapter E and Subchapter F of this Chapter, beds may not be disenrolled except as provided under the alternate use policy and during the 120-day period to have beds relicensed or recertified. The approval for beds disenrolled will automatically expire except as otherwise indicated.

F. The facility need review approval for licensed nursing facilities or ICF/DDs located in an area(s) which have been affected by an executive order or proclamation of emergency or disaster due to Hurricanes Katrina and/or Rita, and which were operating at the time the executive order or proclamation was issued under R.S. 29:794, shall be revoked or terminated unless the nursing facility or ICF/DD re-licenses and re-enrolls its beds in the Medicaid Program within 120 days from January 1, 2010.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), amended LR 28:2190 (October 2002), amended LR 30:1023 (May 2004), amended LR 32:845 (May 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing LR 34:2619 (December 2008), amended LR 35:2439 (November 2009).

Subchapter F. Exception Criteria for Bed Approvals

§12533. General Provisions

A. The facility need review bed approvals for a licensed and Medicaid certified nursing facility or ICF/DD located 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 shall remain in effect and shall not be terminated, revoked or considered to have expired for a period not to exceed two years for a nursing facility and one year for an ICF/DD, following the date of such executive order or proclamation, provided that the following conditions are met:

1. the nursing facility or 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 nursing facility or ICF/DD has experienced an interruption in the provisions 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 nursing facility or ICF/DD intends to resume operation as a nursing facility or ICF/DD in the same service area;

i. if the ICF/DD was approved through an RFP, the ICF/DD must conform to the requirements of the RFP as defined by the department; and

c. includes an attestation that the emergency or disaster is the sole causal factor in the interruption of the provision of services;

NOTE: Pursuant to these provisions, an extension of the 60-day deadline may be granted at the discretion of the department.

2. the nursing facility or ICF/DD resumes operating as a nursing facility or ICF/DD in the same service area, within two years for a nursing facility and within one year for an ICF/DD, of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766; and

3. the nursing facility or ICF/DD continues to submit the required documentation and information to the department.

B. The provisions of this Section shall not apply to:

1. a nursing facility or ICF/DD which has voluntarily surrendered its facility need review bed approval; or

2. a nursing facility or ICF/DD which fails to resume operations as a nursing facility or ICF/DD in the same service area, within two years for a nursing facility and within one year for an ICF/DD, of the executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766.

C. Failure to comply with any of the provisions of this Section shall be deemed a voluntary surrender of the facility need review bed approvals.

C.1. – M. Repealed.

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

HISTORICAL NOTE: Repealed and repromulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:812 (August 1995), amended LR 34:2621 (December 2008), amended and repromulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2439 (November 2009).

Subchapter G. Administrative Appeals

§12541. General Provisions

A. Administrative appeal hearings shall be conducted pursuant to the Administrative Procedures Act.

B. An applicant may request an administrative hearing within 30 calendar days after receipt of the department's notice of denial of facility need review.

1. The request for an administrative hearing must be made in writing to the department's Bureau of Appeals.

2. The request must contain a statement setting forth the specific reason with which the applicant disagrees and the reasons for the disagreement.

3. Unless a timely and proper request is received by the Bureau of Appeals, the findings of the department shall be considered a final and binding administrative determination.

4. The request shall be considered timely if it is postmarked by the 30th calendar day after receipt of the department's notice of denial.

5. A fee of \$500 must accompany a request for an appeal.

C. When an administrative hearing is scheduled, the Bureau of Appeals shall notify the applicant in writing.

1. The notice shall be mailed no later than 15 calendar days before the scheduled date of the administrative hearing and shall contain the:

- a. date of the hearing;
- b. time of the hearing; and
- c. place of the hearing.

D. The administrative hearing shall be conducted by an administrative law judge from the Bureau of Appeals according to the following procedures.

1. An audio recording of the hearing shall be made.

2. A copy of the recording may be prepared and reproduced at the request of a party to the hearing, provided he bears the cost of the copy of the recording.

3. Testimony at the hearing shall be taken only under oath, affirmation or penalty of perjury.

4. Each party shall have the right to:

- a. call and examine parties and witnesses;
- b. introduce exhibits;
- c. question opposing witnesses and parties on any matter relevant to the issue, even though the matter was not covered in the direct examination;

d. impeach any witness, regardless of which party first called him to testify; and

- e. rebut the evidence against him/her.

5. Any relevant evidence shall be admitted if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make the admission of such evidence improper over objection in civil or criminal actions.

a. Documentary evidence may be received in the form of copies or excerpts.

b. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

c. The rules of privilege recognized by law shall be given effect.

6. The administrative law judge may question any party or witness and may admit any relevant and material evidence.

7. A party has the burden of proving whatever facts he/she must establish to sustain his/her position.

8. An applicant who has been denied through the facility need review process shall present his case first and has the burden to show by a preponderance of the evidence that facility need review approval should have been granted by the department pursuant to the provisions of this rules.

9. After an applicant denied facility need review has presented his evidence, the department will then have the opportunity to present its case and to refute and rebut the testimony and evidence presented by the applicant.

E. Any party may appear, and be heard, at any appeals proceeding through an attorney or a designated representative. The representative shall have a written authorization to appear on behalf of the applicant.

1. A person appearing in a representative capacity shall file a written notice of appearance on behalf of a provider identifying:

- a. his/her name;
- b. address;
- c. telephone number; and
- d. the party being represented.

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 35:2440 (November 2009).

§12543. Preliminary Conferences

A. Although not specifically required, the Bureau of Appeals may schedule a preliminary conference. The purposes of the preliminary conference include, but are not limited to:

1. clarification, formulations and simplifications of issues;
2. resolution of controversial matters;
3. exchange of documents and information;
4. stipulations of fact to avoid unnecessary introduction of witnesses;
5. other matters which may aid disposition of the issues; and
6. scheduling a hearing date that is convenient to all parties.

B. When the Bureau of Appeals 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. When the preliminary conference resolves all or some of the matters in controversy, a summary of the findings agreed to at the conference shall be provided by the administrative law judge. When the preliminary conference does not resolve all of the matters in controversy, an administrative hearing shall be scheduled on those matters still in controversy.

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 35:2441 (November 2009).

§12545. Responsibilities of the Administrative Law Judge

- A. The administrative law judge shall have the power to:
1. administer oaths and affirmations;
 2. regulate the course of the hearings;
 3. set the time and place for continued hearings;
 4. fix the time for filing briefs and other documents;
- and
5. direct the parties to appear and confer to consider simplification of the issues.

B. At the conclusion of the administrative hearing, the administrative law judge shall:

1. take the matter under advisement; and
 2. prepare a written proposed decision which will contain:
 - a. findings of fact;
 - b. a determination of the issues presented;
 - c. a citation of applicable policy and regulations;
- and
- d. an order.

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 35:2441 (November 2009).

§12547. Witnesses and Subpoenas

A. Each party shall arrange for the presence of their witnesses at the administrative hearing.

B. A subpoena to compel the attendance of a witness shall be issued by the administrative law judge upon written request by a party or on his own motion.

C. The party is required to notify the administrative law judge in writing at least 10 days in advance of the hearing of those witnesses whom he wishes to be subpoenaed.

D. No subpoena shall be issued until the party (other than the department) who wishes to subpoena a witness first deposits with the hearing officer a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

E. The department may request issuance of subpoenas without depositing said sum of money. The witness fee may be waived if the person is an employee of the department.

F. An application for subpoena duces tecum for the production by a witness of books, papers, correspondence, memoranda or other records, or to permit inspection of such, shall be made in writing to the administrative law judge. The written application shall:

1. give the name and address of the person or entity upon whom the subpoena is to be served.
2. precisely describe the material that is desired to be produced;
3. state the materiality thereof to the issues involved in the proceedings; and
4. include a statement that, to the best of applicant's knowledge, the witness has such items in his possession or under his control.

G. Any party or witness may file a motion to quash, which shall be scheduled by the administrative law judge for a contradictory hearing.

H. When any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, correspondence, memoranda or other records, or to give testimony as required, any party may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt pursuant to the Administrative Procedures Act.

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 35:2441 (November 2009).

§12549. Continuances or Further Hearings

A. The Bureau of Appeals 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 Bureau of Appeals upon good cause shown.

1. If the hearing is not commenced within 180 days from the docketing of the appeal, the decision of the department will be considered upheld.

B. Where the administrative law judge, at his/her discretion, determines that additional evidence is necessary for the proper determination of the case, he/she may:

1. continue the hearing to a later date and order the party(s) to produce additional evidence; or
2. close the hearing and hold the record open in order to permit the introduction of additional documentary evidence.

3. any evidence submitted shall be made available to both parties and each party shall have the opportunity for rebuttal.

C. Written notice of the time and place of a continued or further hearing shall be given. When a continuance of further

hearing is ordered during an administrative hearing, oral notice of the time and place of the continued hearing may be given to each party present.

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 35:2441 (November 2009).

§12551. Proposed and Final Decisions

A. The written proposed decision shall be provided to the secretary of the department or his designee. The secretary or his designee may:

1. adopt the proposed decision;
2. reject it based upon the record; or
3. remand the proposed decision to the administrative law judge to take additional evidence.

a. If the proposed decision is remanded, the administrative law judge shall submit a new proposed decision to the secretary or his designee.

B. The decision of the secretary shall be final and binding upon adoption, subject only to judicial review by the courts. A copy of the decision shall be mailed to the applicant at his last known address or to his authorized representative.

C. Judicial review of the decision of the hearing officer shall be in accordance with the provisions of R.S. 49:964.

D. Motions for Rehearing, Reopening or Reconsideration.

1. A decision or order shall be subject to a motion for rehearing, reopening, or reconsideration by the agency, within 10 days from the date of its entry. Such motion may be made to either the administrative law judge, the director of the Bureau of Appeals, the secretary or the undersecretary, and a copy shall be filed into the administrative record.

2. The grounds for such motion shall be either that:

- a. The decision or order is clearly contrary to the law and the evidence;

- b. The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

- c. There is a showing that issues not previously considered ought to be examined in order to properly dispose of the matter; or

- d. There is other good ground for further consideration of the issues and the evidence in the public interest

3. Such motion shall be ruled upon within 15 days from the date of filing such motion. If the motion for rehearing, reopening or reconsideration is granted, the ALJ shall take further action to rehear, reopen or reconsider the matter.

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 35:2442 (November 2009).

§12553. Failure to Appear at Administrative Hearings

A. If an applicant fails to appear at an administrative hearing, a decision shall be issued by the Bureau of Appeals dismissing the appeal. A copy of the decision shall be mailed to each party or his representative at his last known address.

B. Any dismissal may be rescinded upon order of the Bureau of Appeals if the applicant:

1. makes written application within 10 calendar days after the mailing of the dismissal notice; and

2. provides evidence of good cause for his/her failure to appear at the hearing.

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 35:2442 (November 2009).

Alan Levine
Secretary

0911#088

RULE

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Adult Residential Care (LAC 50:XXI.Chapters 301-309)

The Department of Health and Hospitals, Bureau of Health Services Financing, and the Office of Aging and Adult Services has adopted LAC 50:XXI.Chapters 301-309 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 XXI. Home and Community-Based Services Waivers

Subpart 15. Adult Residential Care

Chapter 301. General Provisions

§30101. Introduction

A. These standards for participation specify the requirements of the Adult Residential Care (ARC) Waiver Program. The program is funded as a waiver service under the provisions of Title XIX of the Social Security Act and is administered by the Department of Health and Hospitals (DHH).

B. Waiver services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

C. Any provider of services under the ARC Waiver shall abide by and adhere to any federal or state laws, rules or any policy, procedures, or manuals issued by the department. Failure to do so may result in sanctions.

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 and the Office of Aging and Adult Services, LR 35:2442 (November 2009).

§30103. Target Population

A. The target population for the Adult Residential Care (ARC) Waiver shall be individuals who are:

1. 65 years of age or older or 21 or over with an adult onset disability (onset at age 21 or over);

2. meet the criteria for admission to a nursing facility; and

3. meet Medicaid financial eligibility.

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, and the Office of Aging and Adult Services, LR 35:2442 (November 2009).

§30105. Request for Services Registry

A. The department is responsible for the Request for Services Registry, hereafter referred to as “the registry”, for the Adult Residential Care Waiver. An individual who wishes to have his or her name placed on the registry shall contact a toll-free telephone number maintained by the department.

B. Individuals who desire placement on the registry shall be screened to determine whether they meet the requirements for nursing facility level of care. Only individuals who meet these criteria will be added to the registry.

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 and the Office of Aging and Adult Services, LR 35:2443 (November 2009).

§30107. Programmatic Allocation of Waiver

Opportunities

A. The ARC waiver shall be implemented in DHH Regions to be selected by the department based on provider interest. The department will allocate waiver capacity within the designated regions. Unused capacity will be reallocated to DHH regions that need additional capacity. If waiver capacity is exhausted in all DHH Regions, the central ARC Waiver registry procedure will be maintained.

B. When funding is appropriated for a new ARC Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available and that the individual will be evaluated for a possible ARC Waiver opportunity assignment. An ARC Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified eligible for Medicaid and the ARC Waiver.

C. ARC Waiver opportunities will be offered based on the date of first request for services with priority offered to individuals who are in a nursing facility, but could return to the community if ARC Waiver services are provided. Priority will also be offered to individuals currently enrolled in another Office of Aging and Adult Services (OAAS)-administered Medicaid waiver whose service needs no longer align with their current waiver program. Support coordinators will develop complementary, but not duplicative, transition plans to ensure seamless and efficient movement into the ARC Waiver from another program. OAAS shall reserve five to ten waiver opportunities for Adult Protective Services/Elderly Protective Services cases for individuals who are substantiated as victims of abuse, neglect, exploitation and extortion and are in need of the ARC Waiver.

D. The remaining waiver opportunities, if any, are offered on a first-come, first-serve basis to individuals who qualify for a nursing facility level of care.

E. If the applicant is determined to be ineligible for any reason, the next individual on the registry is notified as

stated above and the process continues until an individual is determined eligible.

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 and the Office of Aging and Adult Services, LR 35:2443 (November 2009).

§30109. Waiver Costs Limit

A. In order to assure the cost effectiveness of the ARC Waiver, each participant shall have access to ARC waiver services unless the ARC waiver costs exceed 150 percent of nursing facility costs for six or more months. Efforts will be made to understand cost drivers and to preserve waiver participation before disenrollment.

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 and the Office of Aging and Adult Services, LR 35:2443 (November 2009).

Chapter 303. Services

§30301. Covered Services

A. The following services are available to participants in the ARC Waiver. All services must be provided in accordance with the participant’s approved comprehensive plan of care (CPOC). Reimbursement shall not be made for ARC Waiver services provided prior to the department’s approval of the CPOC.

1. Support Coordination. Support coordination services assist individuals in gaining access to necessary waiver and State Plan services, as well as needed social, educational and other services, regardless of the funding source for these services. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant’s approved CPOC.

a. All ARC Waiver participants must receive support coordination services.

b. The support coordinator shall complete a CPOC which contains the type and number of services, including waiver and all other services, necessary to maintain the waiver participant safely in the community.

c. The support coordinator shall complete the initial and annual assessment designated by the department.

d. Comprehensive plans of care and initial and annual assessments must be completed and submitted timely in accordance with DHH policy and procedures.

2. Intensive Support Coordination. Intensive support coordination services assist individuals who are currently residing in nursing facilities to transition into an ARC placement or support individuals who have been admitted into inpatient hospitals in gaining access to necessary waiver and State Plan services, as well as needed social, educational and other services, regardless of the funding source for these services or to ensure that they transition back into the community, if possible.

a. Support coordinators will not receive reimbursement for intensive support coordination before prior authorization is given. Support coordinators will initiate and oversee the process for assessment and reassessment, as well as be responsible for ongoing monitoring of the provision of services included in the recipient’s approved CPOC.

b. Service Limitations. Provision of nursing facility transition intensive support coordination is limited up to six months as approved by the department. All other intensive support coordination is limited up to 45 days.

3. Adult Residential Care Services. Adult residential care services is a coordinated array of supportive personal care services, availability of 24-hour supervision and assistance, both scheduled and unscheduled assistance, age and ability appropriate activities, and health related services designed to accommodate individual resident's changing needs and preference, to maximize the resident's dignity, autonomy, privacy and independence, and to encourage family and community involvement.

a. These services shall include, but are not limited to:

- i. meals;
- ii. laundry;
- iii. social activities;
- iv. assistance with transportation;
- v. direct care services
- vi. health care services
- vii. 24-hour supervision and care; and
- viii. intermittent nursing care.

b. It is the responsibility of the ARC facility to arrange for or provide transportation to recreational and social activities as well as medical appointments. ARC providers must receive prior authorization from OAAS before delivering ARC services.

c. ARC residents shall have private rooms.

i. Single occupancy must be assured by ARC providers.

ii. Sharing of units by individuals who are unrelated is permitted, however requests must be originated by the resident. Support coordinators must authorize sharing of residential units and document that the request was originated by the resident prior to units being shared.

4. Community Transition Benefit. Individuals transitioning into ARC residential settings may be faced with many one-time expenses. The community transition benefit provides assistance with one-time costs associated with establishing a residence. Prior authorization will be required for all community transition benefit expenditures.

a. The community transition benefit may only be used to purchase needed items that the waiver participant does not already own or that the ARC provider is not required by law or rule to provide.

b. Expenses of security deposits, utility set up fees (e.g., telephone, electric, heating, water) shall be allowable in ARC facilities utilizing specific types of federal funding.

c. Items not considered essential include recreational items such as televisions, cable TV, DVD players, stereos, etc.

d. The community transition benefit is capped at \$3,000 during a participant's tenure in the waiver. The benefit may be accessed up to a maximum of three times over the course of their participation in the waiver.

B. ARC Waiver participants may not participate in comparable Medicaid long-term care services including, but not limited to, Medicaid-financed home health care and long term personal care 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2443 (November 2009).

§30303. Comprehensive Plan of Care

A. The comprehensive plan of care (CPOC) is a written agreement that specifies the long-range goals, short-term objectives, specific action steps or services, assignment of responsibility, and time frames for completion or review.

B. Reimbursement shall not be made for ARC Waiver services provided prior to the department's approval of the CPOC. All services and related support coordinator and ARC billing must align with the CPOC.

C. The support coordinator shall complete a CPOC which shall contain:

1. services that meet the needs and objectives and the health, safety and welfare of the individual; and

2. waiver services based on the assessment necessary to maintain the participant safely in the community.

D. Staff or contracted registered nurses (RN) with support coordination agencies will review all Minimum Data Set-Home Care (MDS-HC) assessments and related plans prior to submission to the department for prior authorization.

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 and the Office of Aging and Adult Services, LR 35:2444 (November 2009).

Chapter 305. Admission and Discharge Criteria

§30501. Admission Criteria

A. Admission to the ARC Waiver Program shall be determined in accordance with the following criteria:

1. initial and continued Medicaid financial eligibility;

2. initial and continued eligibility for a nursing facility level of care;

3. justification, as documented in the approved CPOC, that ARC Waiver services are appropriate and cost-effective; and

4. assurance that the health and welfare of the individual can be maintained in the community with the provisions of the ARC Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria above will result in denial of admission to the ARC 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 and the Office of Aging and Adult Services, LR 35:2444 (November 2009).

§30503. Admission Denial or Discharge Criteria

A. Admission shall be denied or the participant shall be discharged from the ARC waiver program if any one of the following conditions is determined:

1. the individual does not meet the criteria for Medicaid financial eligibility;

2. the individual does not meet the criteria for a nursing facility level of care;

3. the participant is incarcerated or placed under the jurisdiction of penal authorities or courts;

4. the participant has a change of residence to another state;

5. the participant fails to comply with lease/admission agreement;

6. the health, safety and welfare of the individual cannot be assured through the provision of ARC services within the individual's cost effectiveness, including, but not limited to:

a. the individual refusing waiver services delivered in accordance with his or her CPOC; or

b. the individual not agreeing to enter into or comply with negotiated risk agreements as determined by an assessment performed by the support coordinator and conditions incorporated into the CPOC and ARC provider service plan;

7. the individual fails to cooperate in the eligibility determination process or in the performance of the CPOC;

8. failure on behalf of the participant to maintain a safe and legal home environment;

9. it is not cost effective to serve the individual in the ARC Waiver;

10. the participant develops a permanent or long-term medical condition or needs a medical treatment, permanently or for an extended period, that is not appropriate for the ARC program; or

11. continuity of services is interrupted as a result of the participant not receiving ARC Waiver services, exclusive of support coordination, during the period of 30 consecutive days.

B. A resident may not be discharged if a participant has paid room and board/rent and leaves the facility for any reason during the time they are enrolled in the waiver.

C. The ARC Waiver will not make service ("bed-hold") payments to an ARC provider while a participant is not in residence.

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 and the Office of Aging and Adult Services, LR 35:2444 (November 2009).

Chapter 307. Provider Participation

§30701. ARC Provider Responsibilities

A. Each ARC provider must meet adult residential care provider licensure and certification standards set forth by the Louisiana Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section. ARC providers must be in good standing with licensure.

B. All enrolled adult residential care facilities and nursing facilities that are converting units/beds to ARC units must demonstrate commitment to resident-centered/culture change principles. Resident centered or culture change organizations are those that are considered to have:

1. close relationships existing between residents, family members, staff, and community;

2. residents direct their own care and living choices (e.g., daily schedules, food choices, other decisions);

3. personnel organized around the needs and desires of clients rather than by departments;

4. management that allows collaborative and group decision making;

5. processes/measures that are used for continuous quality improvement; and

6. a living environment that is designed to be a home rather than an institution.

C. All ARC providers must have OAAS approved negotiated risk agreement procedures and negotiated risk agreement templates before they are enrolled as waiver providers. If, during the assessment or the development of the CPOC or service plan, there is a need for a negotiated risk agreement as a condition of residency, the agreement elements shall be incorporated into the CPOC. Support coordinators shall review any subsequent negotiated risk agreements and incorporate risk agreement elements in the plan of care as necessary.

D. ARC providers are required to set aside operating funds to account for shortfalls that arise due to various causes.

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 and the Office of Aging and Adult Services, LR 35:2445 (November 2009).

§30703. Support Coordination Agency Responsibilities

A. The support coordination agency must meet case management licensing standards set forth by the Louisiana Department of Health and Hospitals, Health Standards Section and must enter into a provider enrollment agreement as specified 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2445 (November 2009).

§30705. Reporting Requirements

A. Support coordinators and direct service providers, including ARC providers, are obligated to report changes to the department that could affect the waiver participant's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordinators and direct service providers, including ARC providers, are responsible for documenting the occurrence of incidents or accidents that affect the health, safety and welfare of the participant and completing an incident report. Incident reports shall be submitted to the department in accordance with the specified requirements. Categories of critical incidents include but are not limited to:

1. abuse;
2. neglect;
3. misappropriation of property; and
4. extortion.

C. Support coordinators will speak with ARC participants at least monthly and will meet face-to-face with ARC providers and recipients at least quarterly to review and update (as needed) the ARC Service Plan. Such required contact shall be documented in the support coordinator's records and in the appropriate electronic reporting systems.

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 and the Office of Aging and Adult Services, LR 35:2445 (November 2009).

§30707. Recordkeeping

A. An ARC facility's employee records must contain the verification of the hours worked by individual employees which may be sign-in sheets or time cards, but shall indicate

the specific time the employee clocked in and out for all employees, even those persons employed on a contractual or consultant basis.

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 and the Office of Aging and Adult Services, LR 35:2445 (November 2009).

Chapter 309. Reimbursement

§30901. General Provisions

A. ARC Services. Louisiana Medicaid participating providers that are licensed and certified to provide ARC services to Medicaid eligible individuals will be reimbursed for these services on a per diem basis as described in this Chapter. Specific rates will be paid based on assessment acuity levels established on RUG-III grouped into three or more tiers.

B. Payments to ARC facilities for the waiver services will be based on the MDS-HC Resource Use Group-III/Home Care (RUG-III/HC) algorithm, which classifies individuals based on their intensity of resource need. The RUG-III/HC system has been derived from the RUG-III payment system now used by Louisiana Medicaid to reimburse nursing facilities and will support the integration of a common payment methodology into a new service setting.

C. Medicaid is prohibited from making “bed-hold” payments when a resident enters a facility.

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 and the Office of Aging and Adult Services, LR 35:2446 (November 2009).

§30903. Provider Reimbursement

A. The rate paid for ARC services shall be based on a percentage of the July 1 statewide average nursing facility case-mix rate after removing the provider fee component and the patient liability amount.

B. Support coordination services shall be reimbursed at a flat fee for each approved unit of service.

C. Personal Emergency Response Systems shall be reimbursed at a \$30.00 initial installation fee and a \$27.00 monthly maintenance fee.

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 and the Office of Aging and Adult Services, LR 35:2446 (November 2009).

§30905. Room and Board

A. Participants shall pay their room and board expenses directly to the ARC provider. The provider may only assess a maximum room and board charge for all Medicaid participants equal to the amount of Supplemental Security Income (SSI) minus the amount that DHH OAAS designates for personal needs allowance (PNA) sufficient for community living.

1. All ARC providers are required to execute an admission agreement/lease with residents and are prohibited from modifying the room and board without providing at least 30 days prior written notice to the resident.

2. If monthly room and board is paid to the facility by the resident, that resident may not be involuntarily discharged by the facility.

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, and the Office of Aging and Adult Services, LR 35:2446 (November 2009).

§30907. Cost Reporting

A. Adult Residential Care providers shall be required to file annual cost reports for evaluation by the department. Cost reports shall be filed as follows:

1. The cost report schedules will be provided by the department and must be submitted annually. The due date for filing annual cost reports is the last day of the fifth month following the facility's fiscal year end.

a. There shall be no automatic extension of the due date for the filing of cost reports. If a provider experiences unavoidable difficulties in preparing its cost report by the prescribed due date, one 30-day extension may be permitted, upon approval by the department.

b. A request for extension must be submitted to the department in writing prior to the prescribed due date of the cost report. Habitual requests for extensions will be considered in the extension evaluation by the department. The request must explain in detail why the extension is necessary. Extensions beyond 30 days may be approved for situations beyond the facility's control. An extension will not be granted when the provider agreement is terminated or a change in ownership occurs.

B. For failure to file a cost report by the prescribed due date, a penalty of five percent of the total monthly payment for each month of non-compliance may be levied. The penalty may be a progressive penalty of five percent for each succeeding month of non-compliance.

C. The cost report must be prepared in accordance with instructions provided by the department using the definition of allowable and non-allowable cost contained in the most current version of the Medicare Provider Reimbursement Manual, 15-I as of the end of the cost report period.

D. Separate cost reports must be submitted by central/home offices when costs of the central/home office are reported in the facility's 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, and the Office of Aging and Adult Services, LR 35:2446 (November 2009).

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.

Alan Levine
Secretary

0911#089

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Home and Community-Based Services Waivers
Elderly and Disabled Adults
(LAC 50:XXI.8101, 8105, 8107, 8301, 8303, and 8701)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services has amended LAC 50:XXI.8101, 8105, 8301, 8303, 8701 and has adopted §8107 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 XXI. Home and Community Based Services
Waivers**

Subpart 7. Elderly and Disabled Adults Waiver

Chapter 81. General Provisions

§8101. Introduction

A. The target population for the Elderly and Disabled Adult (EDA) Waiver Program includes individuals who are:

1. 65 years of age or older; or
2. 21-64 years of age and disabled according to Medicaid standards or the Social Security Administration's disability criteria; and
3. meet nursing facility level of care requirements; and
4. are at imminent risk of nursing facility placement.
 - a. An individual is considered to be at imminent risk of nursing facility placement when he or she meets one of the following criteria:
 - i. is likely to require admission to a nursing facility within the next 120 days;
 - ii. faces a substantial possibility of deterioration in mental condition, physical condition or functioning if either home and community-based services or nursing facility services are not provided within 120 days; or
 - iii. has a primary caregiver who has a disability or is age 70 or older.

B. ...

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 Community Supports and Services, LR 30:1698 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department Of Health and Hospitals, Office of Aging and Adult Services, LR 34:1029 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2447 (November 2009).

§8105. Programmatic Allocation of Waiver Opportunities

A. ...

B. Effective February 1, 2009, EDA Waiver opportunities shall be offered to individuals on the registry

according to needs-based priority groups. The following groups shall have priority for EDA Waiver opportunities, in the order listed:

1. individuals who are victims of abuse or neglect as substantiated by Adult Protective Services or Elderly Protective Services and would require institutional placement to prevent further abuse and neglect without the availability of EDA Waiver services;
 - a. - c. Repealed
 2. individuals presently residing in nursing facilities;
 3. individuals who are not presently receiving home and community-based services (HCBS) under another approved state program, including, but not limited to the:
 - a. Adult Day Health Care (ADHC) Waiver;
 - b. New Opportunities Waiver (NOW);
 - c. Supports Waiver;
 - d. Program for All-inclusive Care for the Elderly (PACE); and
 - e. Long Term–Personal Care Services (LT-PCS) Program; and

NOTE: For purposes of this priority group, state-funded Office for Citizens with Developmental Disabilities (OCDD) services shall not be considered another HCBS program.

4. all other individuals on the Request for Services Registry (RFSR), by date of first request for services.

C. Notwithstanding the needs-based priority group provisions, one hundred and fifty EDA Waiver opportunities are reserved for qualifying individuals who have been diagnosed with Amyotrophic Lateral Sclerosis (ALS). Qualifying individuals who have been diagnosed with ALS shall be offered an opportunity on a first-come, first-serve basis.

D. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process continues until an individual is determined eligible. An EDA Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

E. 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, Office of the Secretary, Bureau of Health Services Financing, LR 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:1030 (June 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2447 (November 2009).

§8107. Resource Assessment Process

A. Each EDA Waiver applicant/recipient shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC). The MDS-HC is designed to verify that an individual meets a nursing facility level of care and to identify his/her need for support in conducting activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score that assigns the individual to a Resource Utilization Group (RUG-III/HC).

B. The following seven primary RUG-III/HC categories and subcategories will be utilized to determine the assistance needed for various ADLs and IADLs:

1. Special Rehabilitation. Individuals in this category have had at least 120 minutes of rehabilitation therapy (physical, occupational and/or speech) within the seven days prior to their MDS-HC assessment.

2. Extensive Services. Individuals in this category have a medium to high level of need for assistance with ADLs and require one or more of the following services:

- a. tracheostomy;
- b. ventilator or respirator; or
- c. suctioning.

3. Special Care. Individuals in this category have a medium to high level of need for assistance with ADLs and have one or more of the following conditions or require one or more of the following treatments:

- a. stage 3 or 4 pressure ulcers;
- b. tube feeding;
- c. multiple sclerosis diagnosis;
- d. quadriplegia;
- e. burn treatment;
- f. radiation treatment;
- g. IV medications; or
- h. fever and one or more of the following

conditions:

- i. dehydration diagnosis;
- ii. pneumonia diagnosis;
- iii. vomiting; or
- iv. unintended weight loss.

4. Clinically Complex. Individuals in this category have the following specific clinical diagnoses or require the specified treatments:

- a. dehydration;
- b. any stasis ulcer;
 - i. a stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;
- c. end-stage/terminal illness;
- d. chemotherapy;
- e. blood transfusion;
- f. skin problem;
- g. cerebral palsy diagnosis;
- h. urinary tract infection;
- i. hemiplegia diagnosis;

i. hemiplegia is total or partial inability to move, experienced on one side of the body, caused by brain disease or injury;

- j. dialysis treatment;
- k. diagnosis of pneumonia;
- l. one or more of the seven criteria in Special Care (with low ADL need); or

m. one or more of the three criteria in Extensive Services (with low ADL need).

5. Impaired Cognition. Individuals in this category have a low to medium need for assistance with ADLs and impairment in cognitive ability. This category includes individuals with short-term memory loss, trouble in decision-making, difficulty in making themselves understood by others and difficulty in eating performance.

6. Behavior Problems. Individuals in this category have a low to medium need for assistance with ADLs and behavior problems. This category includes individuals that may have socially inappropriate behavior, are physically or verbally abusive, have hallucinations or exhibit wandering behavior.

7. Reduced Physical Function. Persons in this category do not meet the criteria in one of the previous six categories.

C. Based on the RUG III/HC score, the applicant/recipient is assigned to a level of support category and is eligible for a set annual services budget associated with that level.

1. If the applicant/recipient disagrees with his/her annual services budget, the applicant/recipient or his/her personal representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may only seek an increase in the annual services budget amount upon showing that:

a. the budget allocation methodology was incorrectly applied and the correct application of the methodology would result in an increase in the annual services budget amount; or

b. he/she needs an increase in the annual services budget to avoid entering into a nursing facility.

D. Each EDA Waiver participant shall be re-assessed annually.

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 and the Office of Aging and Adult Services, LR 35:2447 (November 2009).

Chapter 83. Services

§8301. Service Descriptions

A. - A.3. ...

a. There is a lifetime cap of \$3,000 per recipient for this service.

4. ...

5. Companion Services include care, supervision and socialization provided during the day or night to a participant with functional impairments, as approved in the comprehensive plan of care.

a. Companions may assist or supervise participants who:

- i. are unable to safely stay alone;
- ii. are unable to self direct their own care; or
- iii. possess limited mobility or cognitive function

to such an extent that they may not be able to utilize the PERS and/or evacuate in dangerous situations without assistance or general supervision.

b. Companions may also provide safety for the participant who is awake and wanders.

c. Companion services include the following activities:

i. assisting the participant in dangerous and/or emergency situations by helping him/her to safely evacuate from his/her own home as designated in the emergency evacuation plan contained in the approved CPOC;

ii. supervising or assisting the participant with supervision necessary to live independently as indicated in the approved CPOC;

iii. supervising or assisting with health related tasks (any health related procedures governed under the Nurse Practice Act) if he/she is unable to do so without supports according to applicable delegation/medication administration; and

iv. supervising or assisting the participant, who is unable to do so without supports, to socialize in his/her

community according to the desired outcomes included in the CPOC.

d. Companion services may be provided by one worker for up to three waiver participants who live together and who have a common direct service provider.

i. Waiver participants may share companion service staff when agreed to by the participants and when health, safety and welfare can be assured for each individual.

ii. Shared companion services shall be reflected on the CPOC of each participant.

e. Persons designated as the personal representative of an individual receiving companion services may not be paid to provide services to the individual they are representing.

6. - 7.h.iv. NOTE ...

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 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1245 (July 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2448 (November 2009).

§8303. Comprehensive Plan of Care

A. The applicant and support coordinator have the flexibility to construct a CPOC that serves the applicant's health and welfare needs. The service package provided under the CPOC may include the array of services covered under the EDA Waiver in addition to services covered under the Medicaid State Plan (not to exceed the established service limits for either waiver or State Plan services). All services approved pursuant to the CPOC must be medically necessary and provided in a cost-effective manner.

B. Reimbursement shall not be made for EDA Waiver services provided prior to department's approval of the comprehensive plan of care.

1. - 3. Repealed.

C. The support coordinator shall complete a CPOC which shall contain the:

1. types and number of services (including waiver and all other services) necessary to maintain the waiver recipient safely in the community;

2. individual cost of each service (including waiver and all other services); and

3. the cost of services covered by the CPOC.

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 30:1699 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2449 (November 2009).

Chapter 87. Waiver Cost Effectiveness

§8701. Waiver Costs Limit

A. Effective February 1, 2009, the annual service budget for each of the RUG-III/HC groups shall be reviewed to ensure that the costs of the EDA Waiver remain within applicable federal rules regarding the cost-effectiveness of the waiver. To ensure cost-effectiveness, the mean

expenditures across all RUG-III/HC categories must be less than or equal to the average cost to the state of providing care in a nursing facility. If the waiver is not cost-effective, the annual service budgets for some or all RUG-III/HC groups will be reduced to bring the waiver into compliance.

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 30:1700 (August 2004), amended by the Department of Health and Hospitals, Office of the Secretary, Division of Long Term Supports and Services, LR 32:1246 (July 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2449 (November 2009).

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.

Alan Levine
Secretary

0911#090

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Medicaid Eligibility Youth Aging Out of Foster Care (LAC 50:III.2307)

The Department of Health and Hospitals, Bureau of Health Services Financing has adopted LAC 50:III.2307 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 III. Eligibility

Subpart 3. Eligibility Groups and Factors

Chapter 23. Eligibility Groups and Medicaid Programs

§2307. Youth Aging Out of Foster Care

A. Pursuant to Section 477 of the Foster Care Independence Act of 1999 (Public Law 106-169) and Act 352 of the 2008 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals hereby implements a Medicaid eligibility group, effective March 1, 2009, to provide health care coverage to youth who are transitioning out of foster care to self-sufficiency upon reaching age 18. This eligibility group will be called Youth Aging Out of Foster Care.

B. Eligibility Requirements. Youth who are aging out of foster care on or after March 1, 2009 and meet all of the following requirements may receive Medicaid health care coverage under this new eligibility group.

1. The youth must be from age 18 up to age 21.

2. The youth must have been in foster care and in state custody, either in Louisiana or another state, upon obtaining age 18.

3. The youth must live in Louisiana.

C. Income, resources and insurance status are not considered when determining eligibility.

D. Individuals determined eligible in this group shall receive coverage of medically necessary health care services provided under the Medicaid State Plan.

1. The assistance unit shall consist of the youth only.

E. Eligibility for the program will continue until the youth reaches age 21 unless the youth:

1. moves out of state;
2. requests closure of the case;
3. is incarcerated; or
4. dies.

F. Application Process. No application is required for this eligibility group. Closure of a foster care case due to the youth reaching age 18 establishes eligibility.

G. Certification Period. The certification period shall begin the month the youth reaches age 18 and will end on the last day of the month in which the youth reaches age 21.

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 35:2449 (November 2009).

Alan Levine
Secretary

0911#091

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Personal Care Services—Long Term
(LAC 50:XV.12901, 12909, 12915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services has amended LAC 50:XV.12901, 12909 and 12915 under 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 XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. ...

B. Each long-term personal care services (LT-PCS) applicant/recipient shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC). The MDS-HC is designed to verify that an individual meets a nursing facility level of care and to identify his/her need for support in conducting activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The MDS-HC assessment generates a score that assigns the individual to a Resource Utilization Group (RUG-III/HC).

C. The following seven primary RUG-III/HC categories and subcategories will be utilized to determine the assistance needed for various ADLs and IADLs:

1. Special Rehabilitation. Individuals in this category have had at least 120 minutes of rehabilitation therapy (physical, occupational or speech) within the seven days prior to their MDS-HC assessment.

2. Extensive Services. Individuals in this category have a medium to high level of need for assistance with ADLs and require one or more of the following services:

- a. tracheostomy;
- b. ventilator or respirator; or
- c. suctioning.

3. Special Care. Individuals in this category have a medium to high level of need for assistance with ADLs as well as having one or more of the following conditions, or requiring one or more of the following treatments:

- a. stage 3 or 4 pressure ulcers;
- b. tube feeding;
- c. multiple sclerosis diagnosis;
- d. quadriplegia;
- e. burn treatment;
- f. radiation treatment;
- g. IV medications; or
- h. fever and one or more of the following

conditions:

- i. dehydration diagnosis;
- ii. pneumonia diagnosis;
- iii. vomiting; or
- iv. unintended weight loss.

4. Clinically Complex. Individuals in this category have the following specific clinical diagnoses or require the specified treatments:

- a. dehydration;
- b. any stasis ulcer;
 - i. a stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;
- c. end-stage/terminal illness;
- d. chemotherapy;
- e. blood transfusion;
- f. skin problem;
- g. cerebral palsy diagnosis;
- h. urinary tract infection;
- i. hemiplegia diagnosis;

i. hemiplegia is a total or partial inability to move, experienced on one side of the body, caused by brain disease or injury;

- j. dialysis treatment;
- k. diagnosis of pneumonia;

l. one or more of the seven criteria in Special Care (with low ADL need); or

m. one or more of the three criteria in Extensive Services (with low ADL need).

5. Impaired Cognition. Individuals in this category have a low to medium need for assistance with ADLs and impairment in cognitive ability. This category includes individuals with short-term memory loss, trouble in decision-making, difficulty in making themselves understood by others, and difficulty in eating performance.

6. Behavior Problems. Individuals in this category have a low to medium need for assistance with ADLs and

behavior problems. This category includes individuals that may have socially inappropriate behavior, are physically or verbally abusive, have hallucinations or exhibit wandering behavior.

7. Reduced Physical Function. Individuals in this category do not meet the criteria in one of the previous six categories.

D. Based on the RUG III/HC score, the applicant/recipient is assigned to a level of support category and is eligible for a set allocation of weekly service hours associated with that level.

1. If the applicant/recipient disagrees with his/her allocation of weekly service hours, the applicant/recipient or his/her personal representative may request a fair hearing to appeal the decision.

2. The applicant/recipient may only obtain additional hours upon showing that:

a. the allocation methodology was incorrectly applied and the correct application of the methodology would result in additional hours; or

b. he/she needs additional hours to avoid entering into a nursing facility.

E. Each LT-PCS recipient shall be re-assessed annually.

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

HISTORICAL NOTE: Amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009).

§12909. Standards for Participation

A. - B.11. ...

12. maintain an office in each region in which it proposes to provide services.

12.a.-c. ...

C. An LT-PCS provider shall not refuse to serve any individual who chooses his 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 or its designee must be immediately notified of the circumstances surrounding a refusal by a provider to render services.

2. This requirement can only be waived by OAAS or its designee.

D. OAAS or its designee is charged with the responsibility of setting the standards, monitoring the outcomes and applying administrative sanctions for failures by service providers to meet the minimum standards for participation.

1. Failure to meet the minimum standards shall result in a range of required corrective actions including, but not limited to:

- a. removal from the Freedom of Choice listing;
- b. a citation of deficient practice;
- c. a request for corrective action plan; and/or
- d. administrative sanctions.

2. Continued failure to meet the minimum standards shall result in the loss of referral of new LT-PCS recipients and/or continued enrollment as an LT-PCS provider.

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 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009).

§12915. Service Limitations

A. Personal care services shall be limited to up to 42 hours per week. Authorization of service hours shall be considered on a case-by-case basis as substantiated by the recipient's plan of care and supporting documentation.

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 29:913 (June 2003), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2581 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009).

Alan Levine
Secretary

0911#092

RULE

Department of Insurance Office of the Commissioner

Regulation 58—Viatical Settlements (LAC 37:XIII.Chapter 39)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Commissioner of Insurance for the Louisiana Department of Insurance hereby adopts its replacement Regulation 58 entitled "Viatical Settlements." The purpose of replacement Regulation 58 is to set forth certain requirements related to viatical settlements including but not limited to licensure of life and/or annuity insurance producers and to simplify the filing of annual reports required under Title 22, the Louisiana Insurance Code. This action complies with the statutory law administered by the Department of Insurance.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 39 Regulation Number 58—Viatical Settlements

§3901. Purpose

A. The purpose of Regulation 58 is to set forth certain requirements related to viatical settlements including but not limited to licensure of life and/or annuity insurance

producers and the filing of the annual report required under Title 22, the Louisiana Insurance Code, specifically R.S. 22:1795.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2451 (November 2009).

§3903. Authority

A. Regulation 58 is issued pursuant to the authority vested in the Commissioner of Insurance of the state of Louisiana under R.S. 22:11, and R.S. 22:1804.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2452 (November 2009).

§3905. Life and/or Annuity Producers Acting as Brokers

A. A life insurance producer licensed in Louisiana who wishes to operate as a viatical settlement broker shall notify the Commissioner of Insurance, in writing, of his intent to act as a viatical settlement broker prior to acting as a broker. The notice shall include:

1. the full name and life insurance producer number of the entity which will be acting as a viatical settlement broker;
2. if a corporation, partnership, limited liability company or other non-natural person the full name and individual license number of each person in the entity which will be acting as a viatical settlement broker on behalf of the entity;
3. the notice shall be signed by the licensed producer, if a natural person or, if a corporation, partnership, limited liability or other non-natural person, an authorized officer or other such representative of the entity.

B. Pursuant to R.S. 22:1792.A(1) any person licensed as a life and/or annuity producer acting as viatical settlement broker shall be subject to all provisions of this Part applicable to a licensed viatical settlement broker until such time as that producer has notified the department, in writing, of his intent to no longer act as a viatical settlement broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2452 (November 2009).

§3907. Annual Reports

A. Regulation 58 shall be applicable to all annual reports filed with the department after the effective date of Regulation 58.

B. The following entities are required to file an annual report:

1. viatical settlement providers;
2. viatical settlement brokers and all licensed insurance producers acting as viatical settlement brokers pursuant to R.S. 22:1792 A.(1); and
3. viatical settlement investment agents.

C. An annual report shall be filed regardless of whether there were any transactions to report from the previous year.

D. Annual reports shall be filed on or before March 1 of each year for the period of January 1 to December 31 of the previous calendar year.

1. Only transactions involving Louisiana viators shall be reported.

2. All annual reports shall be on forms provided by the commissioner.

E. Each annual report shall be certified as true and correct and shall be sworn before a notary public either by the licensee if a natural person, or if the licensee is a corporation, partnership, limited liability or other non-natural person by two authorized officers or other such representatives of the entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2452 (November 2009).

§3909. Viatical Settlement Provider Annual Report

A. The Viatical Settlement Provider Annual Report shall include the following information for each policy viaticated in the reporting year.

1. The date the viatical contract was entered into which shall be the date on which the viator and the viatical settlement provider agreed to the final terms of the contract.
2. The full legal name of each person who acted as a viatical settlement broker in the transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2452 (November 2009).

§3911. Viatical Settlement Broker Annual Report

A. The viatical settlement broker annual report shall include the following information for each transaction in which the licensee acted as a viatical settlement broker.

1. The date the viatical contract was entered into which shall be the date on which the viator and the viatical settlement provider agreed to the final terms of the contract.
2. The full, legal name of the viatical settlement provider(s) that purchased the policy.
3. The full legal name(s) of each person who acted as a viatical settlement broker in the transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2452 (November 2009).

§3913. Viatical Settlement Investment Agent Annual Report

A. The viatical settlement investment agent annual report shall include the following information:

1. the full name of all viatical settlement providers for which funding was sought;
2. the total amount of funding secured for each viatical settlement provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2452 (November 2009).

§3915. Notice of Regulatory Action

A. Any licensee under this part (including a licensed life insurance producer acting as a viatical settlement broker) shall notify the commissioner of any regulatory action against the entity in any state within 60 days of the final disposition of such regulatory action.

B. *Regulatory Action*—shall include any fines, revocations, and suspensions imposed by a state or federal agency. Regulatory actions shall also include any consent agreements, stipulations, or other such agreements with any state or federal agency initiated as a result of allegations of wrong-doing or regulatory or legal infractions regardless of whether or not any wrongdoing was admitted by the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2453 (November 2009).

§3917. Minimum Financial Requirements

A. Any viatical settlement provider licensed under this part shall be at the time of initial licensure and at all times thereafter be a solvent entity. Failure to maintain the required financial solvency shall be grounds for any appropriate action by the commissioner including, but not limited to, the immediate issuance of a cease and desist order and/or a summary suspension, or the revocation of the applicable license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2453 (November 2009).

§3919. Notification of Change of Information

A. Every viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall notify the commissioner, in writing, of any changes to the information submitted in association with the application. This notification shall be made within 60 days following the effective date of the change. Every such notification must contain the appropriate documents as indicated below.

1. For an amendment to the articles of incorporation or other organizational documents, the notice must include a copy of the amended articles certified as true and correct by the proper domiciliary state official.

2. For a change in the officers, directors, or natural persons owning 10 percent or more (directly or indirectly), partners, members, designated employees or other individuals responsible for the conduct of affairs of the applicant, the notice shall contain a completed biographical affidavit for each and every new individual named to such a position. The biographical affidavit shall be on a form approved by the commissioner.

3. For a change in ownership of 10 percent or more (directly or indirectly) where the new owner is not a natural person, the notice shall contain a detailed description of the corporate organizational/ownership structure of the entity, its parent company and all affiliates. This description should include an organizational chart showing the ownership percentages for any persons owning 10 percent or more of all

affiliated entities up to and including the ultimate controlling person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:1804, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 35:2453 (November 2009).

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.

1. Identification and Estimate of the Number of the Small Businesses subject to the Proposed Rule. The proposed Rule should have no measurable impact upon small businesses.

2. The Projected Reporting, Recordkeeping, and other Administrative Costs Required for Compliance with the Proposed Rule, Including the Type of Professional Skills Necessary for Preparation of the Report or Record. The proposed Rule should have no measurable impact upon small businesses.

3. A Statement of the Probable Effect on Impacted Small Businesses. The proposed Rule should have no measurable impact upon small businesses.

4. Describe Any Less Intrusive or Less Costly Alternative Methods of Achieving the Purpose of the Proposed Rule. The proposed Rule should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

James J. Donelon
Commissioner

0911#046

RULE

Department of Insurance Office of the Commissioner

Regulation 98—Annual Financial Reporting (LAC 37:XIII.Chapter 137)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance gives notice of the promulgation of Regulation 98 pursuant to R.S. 22:671 et seq., more particularly described as the "Audited Financial Reports Law".

Regulation 98 is needed to make certain changes, clarify the current language and to implement these annual financial reporting requirements which will improve the surveillance of the financial condition of insurers by the Department of Insurance and will further the National Association of

Insurance Commissioners' (NAIC) unified effort toward reciprocity among the states.

Title 37
INSURANCE

Part XIII. Regulations

Chapter 137. Regulation 98—Annual Financial Reporting

§13701. Authority

A. Regulation 98 is promulgated by the Commissioner of Insurance (commissioner) of the Louisiana Department of Insurance (department) pursuant to authority granted under the Louisiana Insurance Code Title 22, R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq. more particularly R.S. 22:675.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2454 (November 2009).

§13703. Purpose and Scope

A. The purpose of Regulation 98 is to improve the surveillance of the financial condition of insurers by the department by requiring:

1. an annual audit of financial statements reporting the financial position and the results of operations of insurers by independent certified public accountants;

2. the communication of internal control related matters noted in an audit; and

3. a management's report of internal control over financial reporting.

B. Every insurer as defined by §13705 shall be subject to Regulation 98. Insurers having direct premiums written in this state of less than \$1,000,000 in any calendar year and fewer than 1,000 policyholders or certificate holders of direct written policies nationwide at the end of the calendar year shall be exempt from Regulation 98 for that calendar year unless the commissioner makes a specific finding that compliance is necessary for the commissioner to carry out statutory responsibilities. Insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be exempt.

C. Foreign or alien insurers filing the audited financial report in another state, pursuant to that state's requirement for the filing of audited financial reports, which has been found by the commissioner to be substantially similar to the requirements herein, are exempt from §13707-§13725 of Regulation 98 if:

1. a copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant's letter of qualifications that are filed with the other state are filed with the commissioner in accordance with the filing dates specified in §13707, §13721 and §13723 of Regulation 98 respectively. Canadian insurers may submit accountants' reports as filed with the Office of the Superintendent of Financial Institutions, Canada;

2. a copy of any notification of adverse financial condition report filed with another state is filed with the commissioner within the time specified in §13719 of Regulation 98.

D. Foreign or alien insurers required to file management's report of internal control over financial

reporting in another state are exempt from filing the report in the state of Louisiana provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

E. Regulation 98 shall not prohibit, preclude or in any way limit the commissioner of insurance from ordering or conducting or performing examinations of insurers under the rules and regulations of the Department of Insurance, and the practices and procedures of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2454 (November 2009).

§13705. Definitions

A. The terms and definitions contained herein are intended to provide definitional guidance as the terms are used within Regulation 98.

Accountant or Independent Certified Public Accountant—an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA) and in all states in which he or she is licensed to practice; for Canadian and British companies, the term(s) means a Canadian-chartered or British-chartered accountant.

Affiliate Of, or Person Affiliated with a Specific Person—a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

Audit Committee—a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or Group of insurers and audits of financial statements of the insurer or Group of insurers. The Audit Committee of any entity that controls a Group of insurers may be deemed to be the Audit Committee for one or more of these controlled insurers solely for the purposes of Regulation 98 at the election of the controlling person. Refer to §13727.A.5 for exercising this election. If an Audit Committee is not designated by the insurer, the insurer's entire board of directors shall constitute the Audit Committee.

Audited Financial Report—includes those items specified in §13709 of Regulation 98.

Commissioner—Commissioner of Insurance of the state of Louisiana unless otherwise indicated.

Department—Louisiana Department of Insurance unless otherwise indicated.

Group of Insurers—those licensed insurers included in the reporting requirements Insurance Holding Company System Regulatory Act, R.S. 22:691 et seq., or a set of insurers as identified by management for the purpose of assessing the effectiveness of internal control over financial reporting.

Indemnification—an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from

knowing of other misrepresentations made by the insurer or its representatives.

Independent Board Member—as defined or described in §13727.A.3.

Insurer—a licensed insurer as defined in R.S. 22:46(10) or an authorized insurer as defined in R.S. 22:46(3).

Internal Control over Financial Reporting—a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98 and includes those policies and procedures that:

a. pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;

b. provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98 and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and

c. provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., those items specified in §13709.B.2 through §13709.B.7 of Regulation 98.

NAIC—National Association of Insurance Commissioners.

SEC—the United States Securities and Exchange Commission.

Section 404—Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.

Section 404 Report—management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described or defined in §13705 of Regulation 98.

SOX Compliant Entity—an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002:

a. the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934);

b. the audit committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934); and

c. the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2454 (November 2009).

§13707. General Requirements Related to Filing and Extensions for Filing of Annual Audited Financial Reports and Audit Committee Appointments

A. All insurers shall have an annual audit by an independent certified public accountant and shall file an

audited financial report with the commissioner on or before June 1 for the year ended December 31 immediately preceding. The commissioner may require an insurer to file an Audited financial report earlier than June 1 upon giving 90 days advance notice to the insurer.

B. Extensions of the June 1 filing date may be granted by the commissioner for 30 day periods upon a showing by the insurer and its independent certified public accountant of the reasons for requesting an extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than 10 days prior to the due date and must contain sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

C. If an extension is granted in accordance with the provisions in Subsection B of this Section, a similar extension of 30 days is granted to the filing of management's report of internal control over financial reporting.

D. Every insurer required to file an annual audited financial report pursuant to Regulation 98 shall designate a group of individuals as constituting its audit committee, as defined in §13705 of Regulation 98. The audit committee of an entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of Regulation 98 at the election of the controlling person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2455 (November 2009).

§13709. Contents of Annual Audited Financial Report

A. The annual audited financial report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the department of insurance of the state of domicile.

B. The annual audited financial report shall include the following:

1. report of independent certified public accountant;
2. balance sheet reporting admitted assets, liabilities, capital and surplus;
3. statement of operations;
4. statement of cash flow;
5. statement of changes in capital and surplus;
6. notes to financial statements.

These notes shall be those required by the appropriate National Association of Insurance Commissioners (NAIC) *Annual Statement Instructions* and the NAIC *Accounting Practices and Procedures Manual*. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to R.S. 22:571 and 22:252 with a written description of the nature of these differences.

C. The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the commissioner, and the financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which

an insurer is required to file an audited financial report, the comparative data may be omitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2455 (November 2009).

§13711. Designation of Independent Certified Public Accountant

A. Each insurer required by Regulation 98 to file an annual audited financial report must within 60 days after becoming subject to the requirement, register with the commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in Regulation 98. Insurers not retaining an independent certified public accountant on the effective date of Regulation 98 shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.

B. The insurer shall obtain a letter from the accountant and file a copy with the commissioner stating that the accountant is aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile that relate to accounting and financial matters and affirming that the accountant will express his or her opinion on the financial statements in terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that insurance department, specifying such exceptions as he or she may believe appropriate.

C. If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the commissioner of this event. The insurer shall also furnish the commissioner with a separate letter within 10 business days of the above notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure as well as which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. The disagreements required to be reported in response to this Section include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction.

D. Disagreements contemplated by this Section are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also request in writing that the former accountant furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish the responsive letter from the former accountant to the commissioner together with its own.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2456 (November 2009).

§13713. Qualifications of Independent Certified Public Accountant

A. The commissioner shall not recognize a person or firm as a qualified independent certified public accountant if the person or firm:

1. is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or

2. has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as *indemnification*, with respect to the audit of the insurer.

B. Except as otherwise provided in Regulation 98, the commissioner shall recognize an independent certified public accountant as qualified as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the AICPA and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the State Board of Certified Public Accountants of Louisiana and the Society of Louisiana Certified Public Accountants, or similar code.

C. A qualified independent certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under R.S. 22:2001 et seq., the mediation or arbitration provisions shall operate at the option of the statutory successor.

D.1. The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the commissioner for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least 30 days before the end of the calendar year. The commissioner may consider the following factors in determining if the relief should be granted:

a. number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

b. premium volume of the insurer; or

c. number of jurisdictions in which the insurer transacts business.

2. The insurer shall file, with its annual statement filing, the approval for relief from §13713.D.1 with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

E. The commissioner shall neither recognize as a qualified independent certified public accountant, nor accept

an annual audited financial report, prepared in whole or in part by, a natural person who:

1. has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal or state law;

2. has been found to have violated the insurance laws of this state with respect to any previous reports submitted under Regulation 98; or

3. has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of Regulation 98.

F. The commissioner of insurance, as provided in accordance with the requirements of the Administrative Procedure Act, R.S. 49:950 et seq., may hold a hearing, if requested by the insurer, to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to Regulation 98 and require the insurer to replace the accountant with another accountant whose relationship with the insurer is qualified within the meaning of Regulation 98.

G.1. The commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:

a. bookkeeping or other services related to the accounting records or financial statements of the insurer;

b. financial information systems and design and implementation;

c. appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

d. actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and input used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification (opinion) on an insurer's reserves if the following conditions have been met:

i. neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;

ii. the insurer has competent personnel or engages a third party actuary to estimate the reserves for which management takes responsibility; and

iii. the accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

e. internal audit outsourcing services;

f. management functions or human resources;

g. broker or dealer, investment adviser, or investment banking services;

h. legal services or expert services unrelated to the audit; or

i. any other services that the commissioner determines, by regulation, are impermissible.

2. In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

H. Insurers having direct written and assumed premiums of less than \$100,000,000 in any calendar year may request an exemption from §13713.G.1. The insurer shall file with the commissioner a written statement discussing the reasons why the insurer should be exempt from these provisions. If the commissioner finds, upon review of this statement, that compliance with Regulation 98 would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

I. A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in §13713.G.1 or that do not conflict with §13713.G.2, only if the activity is approved in advance by the audit committee in accordance with §13713.J.

J. All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee. The preapproval requirement is waived with respect to non-audit services if the insurer is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity or:

1. the aggregate amount of all such non-audit services provided to the insurer constitutes not more than 5 percent of the total amount of fees paid by the insurer to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided;

2. the services were not recognized by the insurer at the time of the engagement to be non-audit services; and

3. the services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

K. The audit committee may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by §13713.J. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

L.1. The commissioner shall not recognize an independent certified public accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. Paragraph L.1 shall only apply to partners and senior managers involved in

the audit. An insurer may make application to the commissioner for relief from the above requirement on the basis of unusual circumstances.

2. The insurer shall file, with its annual statement filing, the approval for relief from §13713.L.1 with the states that it is licensed in or doing business in and with the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2456 (November 2009).

§13715. Consolidated or Combined Audits

A. An insurer may make written application to the commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

1. amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
2. amounts for each insurer subject to this Section shall be stated separately;
3. noninsurance operations may be shown on the worksheet on a combined or individual basis;
4. explanations of consolidating and eliminating entries shall be included; and
5. a reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2458 (November 2009).

§13717. Scope of Audit and Report of Independent Certified Public Accountant

A. Financial statements furnished pursuant to §13709 shall be examined by the independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU Section 319 of the Professional Standards of the AICPA, *Consideration of Internal Control in a Financial Statement Audit*, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to §13731, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, *Defining Professional Requirements in Statements on Auditing Standards* or its replacement) the most recently

available report in planning and performing the audit of the statutory financial statements. Consideration shall be given to the procedures illustrated in the *Financial Condition Examiners Handbook* promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2458 (November 2009).

§13719. Notification of Adverse Financial Condition

A. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the commissioner as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Louisiana Insurance Code as of that date. An insurer that has received a report pursuant to this paragraph shall forward a copy of the report to the commissioner within five business days of receipt of the report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the commissioner. If the independent certified public accountant fails to receive the evidence within the required five business day period, the independent certified public accountant shall furnish the commissioner a copy of its report within the next five business days.

B. No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if the statement is made in good faith in compliance with §13719.A.

C. If the accountant, subsequent to the date of the audited financial report filed pursuant to Regulation 98, becomes aware of facts that might have affected his or her report, the commissioner reiterates herein the obligation of the accountant to take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2458 (November 2009).

§13721. Communication of Internal Control Related Matters Noted in an Audit

A. In addition to the annual audited financial report, each insurer shall furnish the commissioner with a written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within 60 days after the filing of the annual audited financial report and shall contain a description of any unremediated material weakness as the term material weakness is defined by Statement on Auditing Standard 112, *Communication of Internal Control Related Matters Identified in an Audit*, or its replacement, including

subsequent statements on auditing standards that may be issued requiring communications of internal control related matters identified in an audit to the audit committee or others charged with governance as of December 31 immediately preceding so as to coincide with the audited financial report discussed in §13707.A in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication should so state.

B. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2458 (November 2009).

§13723. Accountant's Letter of Qualifications

A. The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. that the accountant is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the State Board of Certified Public Accountants of Louisiana and the Society of Louisiana Certified Public Accountants, or similar code;

2. the background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within Regulation 98 shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed by generally accepted auditing standards;

3. that the accountant understands the annual audited financial report and his opinion thereon will be filed in compliance with Regulation 98 and that the commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

4. that the accountant consents to the requirements of §13725 of Regulation 98 and that the accountant consents and agrees to make available for review by the commissioner, or the commissioner's designee or appointed agent, the workpapers, as defined in §13725;

5. a representation that the accountant is properly licensed by an appropriate state licensing authority and is a member in good standing in the AICPA; and

6. a representation that the accountant is in compliance with the requirements of §13713 of Regulation 98.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2459 (November 2009).

§13725. Definition, Availability and Maintenance of Independent Certified Public Accountants Workpapers

A. Workpapers are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's audit of the financial statements of an insurer. Accordingly, workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and which support the accountant's opinion.

B. Every insurer required to file an audited financial report pursuant to Regulation 98, shall require the accountant to make available for review by department of insurance examiners, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department of insurance or at any other reasonable place designated by the commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the department of insurance has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.

C. In the conduct of the aforementioned periodic review by department of insurance examiners, it shall be agreed that photocopies or electronic copies of pertinent audit workpapers may be made and retained by the department. Such reviews by the department examiners shall be considered investigations and all working papers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the department.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2459 (November 2009).

§13727. Requirements for Audit Committees

A. This Section shall not apply to foreign or alien insurers licensed in this state or an insurer that is a SOX Compliant Entity or a direct or indirect wholly-owned subsidiary of a SOX Compliant Entity.

1. The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant including resolution of disagreements between management and the accountant regarding financial reporting for the purpose of preparing or issuing the audited financial report or related work pursuant to Regulation 98. Each accountant shall report directly to the audit committee.

2. Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to §13727.A.5 and as defined by §13705.

3. In order to be considered independent for purposes of this Section, a member of the audit committee may not,

other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires board participation by otherwise non-independent members, that law shall prevail and such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

4. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the department, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to no longer be independent.

5. To exercise the election of the controlling person to designate the audit committee for purposes of Regulation 98, the ultimate controlling person shall provide written notice to the commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

6. The audit committee shall require the accountant that performs any audit for an insurer required by Regulation 98 to timely report to the audit committee in accordance with the requirements of SAS 114, *Communication with Audit Committees*, or its replacement as well as subsequent statements on auditing standards that may be issued requiring communications to audit committees or others charged with governance including:

- a. all significant accounting policies and material permitted practices;
- b. all material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
- c. other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

7. If an insurer is a member of an insurance holding company system, the reports required by §13727.A.6 may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

8. The proportion of independent audit committee members shall meet or exceed the following criteria.

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$300,000,000 - \$500,000,000	Over \$500,000,000
No minimum requirements. See also Note A and B.	Majority (50% or more) of members shall be independent. See also Note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A.

Note A: The commissioner has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a Risk Based Capital (RBC) action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500,000,000 in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

9. An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, of less than \$500,000,000 may make application to the commissioner for a waiver from the §13727 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from §13727 with the states that it is licensed in or doing business in and with the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2459 (November 2009).

§13729. Conduct of Insurer in Connection with the Preparation of Required Reports and Documents

A. No director or officer of an insurer shall, directly or indirectly:

- 1. make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under Regulation 98; or
- 2. omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under Regulation 98.

B. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or

fraudulently influence any accountant engaged in the performance of an audit pursuant to Regulation 98 if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

C. For purposes of Subsection B of this Section, actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include but are not limited to actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

1. to issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards;

2. to not perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;

3. to not withdraw an issued report; or

4. to not communicate matters to an insurer's audit committee.

D. If the commissioner believes that the company or any other person has not materially complied with Regulation 98 or any request, order and/or directive promulgated hereunder, after notice and opportunity to be heard, the commissioner may impose sanctions, including cease and desist orders, the levy of a civil fine as authorized by law, the suspension or revocation of Insurer' Certificate of Authority and the referral by the commissioner of this matter to the proper law enforcement and prosecutorial agencies pursuant to R.S. 22:11 et seq.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2460 (November 2009).

§13731. Management's Report of Internal Control over Financial Reporting

A. Every insurer required to file an audited financial report pursuant to Regulation 98 that has annual direct written and assumed premiums of \$500,000,000 or more, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, shall prepare a report of the insurer's or group of insurers' internal control over financial reporting, as these terms are defined in §13705. The report shall be filed with the commissioner along with the communication of internal control related matters noted in an audit described under §13721 management's report of internal control over financial reporting shall be as of December 31 immediately preceding.

B. Notwithstanding the premium threshold in Subsection A of this Section, the commissioner may require an insurer to file management's report of internal control over financial reporting if the insurer is in any RBC level event, or is deemed to be in hazardous financial condition.

C. An insurer or a group of insurers that are directly subject to Section 404; part of a holding company system whose parent is directly subject to Section 404; not directly subject to Section 404 but is a SOX Compliant Entity; or a member of a holding company system whose parent is not

directly subject to Section 404 but is a SOX Compliant Entity may file its or its parent's Section 404 report and an addendum in satisfaction of this §13731 requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements those items included in Section §13709.B.2 through §13709.B.7 of Regulation 98 were included in the scope of the Section 404 Report.

D. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements those items included in §13709.B.2 through §13709.B.7 of Regulation 98 excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may either file a §13731 report, or the Section 404 Report and a §13731 report for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

E. Management's Report of Internal Control over Financial Reporting shall include:

1. a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;

2. a statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;

3. a statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;

4. a statement that briefly describes the scope of work that is included and whether any internal controls were excluded;

5. disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December 31 immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

6. a statement regarding the inherent limitations of internal control systems; and

7. signatures of the chief executive officer and the chief financial officer or equivalent position/title.

F. Management shall document and make available upon financial condition examination the basis upon which its assertions, required in Subsection E of this Section, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

1. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

2. Management's report on internal control over financial reporting, required by Subsection A of this Section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the department.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2461 (November 2009).

§13733. Exemptions and Effective Dates

A. Upon written application of any insurer, the commissioner may grant an exemption from compliance with any and all provisions of Regulation 98 if the commissioner finds, upon review of the application, that compliance with Regulation 98 would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Within 10 days from a denial of an insurer's written request for an exemption from Regulation 98, the insurer may request in writing a hearing on its application for an exemption. The hearing shall be held in accordance with the regulations of the department pertaining to Division of Administrative Law hearing procedures.

B. Domestic insurers retaining a certified public accountant on the effective date of Regulation 98 who qualify as independent shall comply with Regulation 98 for the year ending December 31, 2010 and each year thereafter unless the commissioner permits otherwise.

C. All domestic insurers shall retain a certified public accountant on the effective date of Regulation 98 who qualifies as independent unless the commissioner permits otherwise. All requests for an exemption from the requirement shall be made in writing to the department, and the commissioner shall have the authority to grant an exemption pursuant to R.S. 22:674.

D. Foreign insurers shall comply with Regulation 98 for the year ending December 31, 2010 and each year thereafter, unless the commissioner permits otherwise.

E. The requirements of §13713.D shall be in effect for audits of the year beginning January 1, 2010 and thereafter.

F. The requirements of §13727 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members as opposed to a supermajority because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded but not earlier than January 1, 2010 to comply with the independence requirements.

Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

G. The requirements of §13731 and other modified sections, except for §13727 previously covered, are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded but not earlier than December 31, 2010 to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2462 (November 2009).

§13735. Canadian and British Companies

A. In the case of Canadian and British insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their supervision authority duly audited by an independent chartered accountant.

B. For such insurers, the letter required in §13711.B shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the commissioner pursuant to §13707 and shall affirm that the opinion expressed is in conformity with those requirements.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2462 (November 2009).

§13737. Severability Provision

A. If any Section or portion of a Section of Regulation 98 or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

AUTHORITY NOTE: Promulgated in accordance with the R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2462 (November 2009).

§13739. Effective Date

A. Regulation 98 shall become effective upon promulgation in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et

seq., more particularly R.S. 22:675 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2462 (November 2009).

James J. Donelon
Commissioner

0911#044

RULE

**Department of Natural Resources
Office of Conservation**

Fees (LAC 43:XIX.701, 703, and 707)

Pursuant to power delegated under the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950, as amended, the Office of Conservation amends LAC 43:XIX.701, 703, and 707 (Statewide Order No. 29-R) in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The action will adopt Statewide Order No. 29-R-09/10 (LAC 43:XIX, Subpart 2, Chapter 7), which establishes the annual Office of Conservation Fee Schedule for the collection of Application, Production, and Regulatory Fees, and will replace the existing Statewide Order No. 29-R-08/09.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 2. Statewide Order No. 29-R

Chapter 7. Fees

§701. Definitions

Application for Permit to Drill (Minerals)—an application to drill in search of minerals (six-months or one-year), as authorized by R.S. 30:28.

BOE—annual barrels oil equivalent. Gas production is converted to BOE by dividing annual mcf by a factor of 11.0.

Capable Gas—natural and casing head gas not classified as incapable gas well gas or incapable oil well gas by the Department of Revenue, as of December 31, 2008.

Capable Oil—crude oil and condensate not classified as incapable oil or stripper oil by the Department of Revenue, as of December 31, 2008.

Production Well—any well which has been permitted by and is subject to the jurisdiction of the Office of Conservation, excluding wells in the permitted and drilling in progress status, Class II injection wells, liquid storage cavity wells, commercial salt water disposal wells, Class V injection wells, wells which have been plugged and abandoned, wells which have reverted to landowner for use as a fresh water well (Statewide Order No. 29-B, LAC 43:XIX.137.G, or successor regulations), multiply completed wells reverted to a single completion, and stripper oil wells or incapable oil wells or incapable gas wells certified by the Severance Tax Section of the Department of Revenue, as of December 31, 2008.

Regulatory Fee—an amount payable annually to the Office of Conservation, in a form and schedule prescribed by the Office of Conservation, on Class II wells, Class III wells, storage wells, Type A facilities, and Type B facilities in an amount not to exceed \$875,000 for Fiscal Year 2000-2001 and thereafter. No fee shall be imposed on a Class II well of an operator who is also an operator of a stripper crude oil well or incapable gas well certified pursuant to R.S. 47.633 by the Severance Tax Section of the Department of Revenue as of December 31, 2008 located in the same field as such Class II well. Operators of Record, excluding operators of wells and including, but not limited to, operators of gasoline/cycling plants, refineries, oil/gas transporters, and/or certain other activities subject to the jurisdiction of the Office of Conservation are required to pay an annual registration fee of \$105. Such payment is due within the time frame prescribed by the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:542 (August 1988), amended LR 15:551 (July 1989), LR 21:1249 (November 1995), LR 24:458 (March 1998), LR 24:2127 (November 1998), LR 25:1873 (October 1999), LR 26:2302 (October 2000), LR 27:1919 (November 2001), LR 28:2366 (November 2002), LR 29:2499 (November 2003), LR 31:2950 (November 2005), LR 32:2087 (November 2006), LR 33:2461 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009).

§703. Fee Schedule for Fiscal Year 2009-2010

A. ...

Application Fees	Amount
***	***
Application for Permit to Drill—Minerals: 0'-3,000' (1 year)	\$252
Application for Permit to Drill—Minerals: 3,001'-10,000' (1 year)	\$ 1,262
Application for Permit to Drill—Minerals: 10,001'+ (1 year)	\$2,528
***	***

B. Regulatory Fees

1. Operators of each permitted Type A Facility are required to pay an annual Regulatory Fee of \$7,326 per facility.

2. Operators of each permitted Type B Facility are required to pay an annual Regulatory Fee of \$3,663 per facility.

3. Operators of record of permitted non-commercial Class II injection/disposal wells are required to pay \$745 per well.

4. Operators of record of permitted Class III and Storage wells are required to pay \$745 per well.

C. Class I Well Fees. Operators of permitted Class I wells are required to pay \$11,428 per well.

D. Production Fees. Operators of record of capable oil wells and capable gas wells are required to pay according to the following annual production fee tiers

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 1	0	17
Tier 2	1 - 5,000	91
Tier 3	5,001 - 15,000	264

Tier	Annual Production (Barrel Oil Equivalent)	Fee (\$ per Well)
Tier 4	15,001 - 30,000	436
Tier 5	30,001 - 60,000	693
Tier 6	60,001 - 110,000	959
Tier 7	110,001 - 9,999,999	1,185

E. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq., R.S. 30:560 and 706.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:543 (August 1988), amended LR 15:552 (July 1989), LR 21:1250 (November 1995), LR 24:458 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2304 (October 2000), LR 27:1920 (November 2001), LR 28:2368 (November 2002), LR 29:350 (March 2003), LR 29:2501 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2404 (November 2008), LR 35:2463 (November 2009).

§707. Severability and Effective Date

A. The fees set forth in §703 are hereby adopted as individual and independent rules comprising this body of rules designated as Statewide Order No. 29-R-09/10 and if any such individual fee is held to be unacceptable, pursuant to R.S. 49:968(H)(2), or held to be invalid by a court of law, then such unacceptability or invalidity shall not affect the other provisions of this order which can be given effect without the unacceptable or invalid provisions, and to that end the provisions of this order are severable.

B. This Order (Statewide Order No. 29-R-09/10) supersedes Statewide Order No. 29-R-08/09 and any amendments thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:21 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 14:544 (August 1988), amended LR 15:552 (July 1989), LR 21:1251 (November 1995), LR 24:459 (March 1998), LR 24:2128 (November 1998), LR 25:1874 (October 1999), LR 26:2305 (October 2000), LR 27:1921 (November 2001), LR 28:2368 (November 2002), LR 29:2502 (November 2003), LR 30:2494 (November 2004), LR 31:2950 (November 2005), LR 32:2088 (November 2006), LR 33:2462 (November 2007), LR 34:2406 (November 2008), LR 35:2464 (November 2009).

James H. Welsh
Commissioner

0911#048

RULE

**Department of Natural Resources
Office of Conservation**

**Pit Closure and Onsite Disposal of E and P Waste
(LAC 43:XIX.311 and 313)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and Title 30 of the Louisiana Revised Statutes of 1950 (R.S. 30:4 et seq.), the Louisiana Office of Conservation hereby amends LAC 43:XIX, Subpart 1 (Statewide Order No. 29-B), Chapter 3 (Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E&P Waste)

Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations).

The recent development of the Haynesville Shale in North Louisiana is made possible through the use of multi-stage hydraulic fracture stimulation technology. This technology requires the use of large quantities of fluids which are primarily composed of freshwater taken from either surface water reservoirs or groundwater aquifers. The intense development of the Haynesville Shale has placed additional strain on the already limited freshwater aquifer resources of the region.

The intent of the amendment is to conserve these freshwater aquifer resources by allowing the limited use of Exploration and Production Waste as a substitute for the fluids required to perform fracture stimulation operations on the Haynesville Shale. The amendment uses sound waste minimization principles along with conservative waste management requirements to promote groundwater resource management and conservation while protecting public health and the environment.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation—General Operations

Subpart 1. Statewide Order No. 29-B

Chapter 3. Pollution Control—Onsite Storage, Treatment and Disposal of Exploration and Production Waste (E and P Waste) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)

§311. Pit Closure

A. Pits must be closed properly to assure protection of soil, surface water, groundwater aquifers and USDW's. Operators may close pits utilizing onsite land treatment, burial, solidification, onsite land development, or other techniques approved by the Office of Conservation only if done so in compliance with §313 and §315. Otherwise, all E&P Waste must be manifested according to §511 and transported offsite to a permitted commercial facility unless temporarily used in hydraulic fracture stimulation operations conducted on the Haynesville Shale Zone in accordance with the requirements of LAC 43:XIX:313.J.

B. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2803 (December 2000), amended LR 33:1658 (August 2007), LR 35:2464 (November 2009).

§313. Pit Closure Techniques and Onsite Disposal of E and P Waste

A. Reserve pit fluids, as well as drilling muds, cuttings, etc., from holding tanks, may be disposed of onsite provided the technical criteria of §313.C, D, E, F, or G below are met, as applicable. All E and P Waste must be either disposed of on-site, temporarily used in hydraulic fracture stimulation operations conducted on the Haynesville Shale Zone in accordance with the requirements of LAC 43:XIX.313.J or transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX.Chapter 5 or under the direction of the commissioner.

B. - H.3. ...

I. Offsite Disposal of E and P Waste

1. Except for produced water, drilling, workover, completion, and stimulation fluids, and rainwater which may be transported by an oil and gas operator to a community well or an operators permitted Class II disposal well, ~~or~~ discharged to surface waters where authorized, or otherwise authorized in LAC 43:XIX.313.J, exploration and production waste shall not be moved offsite for storage, treatment, or disposal unless transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX.Chapter 5 or under the direction of the commissioner.

2. - 3. ...

J. Temporary Use of E and P Waste (Produced Water, Rainwater, Drilling, Workover, Completion and Stimulation Fluids) for Hydraulic Fracture Stimulation of the Haynesville Shale Zone

1. Produced water, rainwater, drilling, workover, completion and stimulation fluids generated at a wellsite (originating wellsite) that are classified as E and P Waste may be transported offsite for use in hydraulic fracture stimulation operations of the Haynesville Shale Zone at another wellsite (receiving wellsite) provided that the following conditions are met.

a. The originating wellsite and the receiving wellsite must have the same operator of record.

b. All residual waste generated in the treatment or processing of E and P Waste prior to its use in hydraulic fracture stimulation operations must be properly disposed of in accordance with the following.

i. All residual waste generated as a result of treatment or processing conducted at the originating wellsite must be either disposed of onsite at the originating wellsite in accordance with all the requirements of LAC 43:XIX.311 and 313, except and not including Subsection 313.J, or offsite in accordance with the requirements of LAC 43:XIX.Chapter 5.

ii. All residual waste generated as a result of treatment or processing conducted at the receiving wellsite must be disposed of offsite in accordance with the requirements of LAC 43:XIX.Chapter 5.

c. At the conclusion of hydraulic fracture stimulation operations involving the temporary use of E and P Waste, all E and P Waste associated with the hydraulic fracture stimulation operation must be either disposed of onsite in accordance with all the requirements of LAC 43:XIX.311 and 313, except and not including Subsection 313.J, or disposed of offsite in accordance with the requirements of LAC 43:XIX.Chapter 5.

d. The types and volumes of E and P Waste generated for temporary use along with the well name and well serial number of the receiving wellsite must be reported on Form ENG-16 (Oilfield Waste Disposition) for the originating well and/or other appropriate forms specified by the commissioner depending on the waste types involved.

e. An affidavit of no objection must be provided by the surface owner of the property on which the receiving wellsite is located. The affidavit must be in a format acceptable to the commissioner and attached to Form ENG-16 (Oilfield Waste Disposition) for the originating well

and/or other appropriate forms specified by the commissioner depending on the waste types involved.

f. E and P Waste intended for temporary use must be stored at the receiving wellsite in an above ground storage tank or a lined production pit which conforms to the liner requirements and operational provisions of LAC 43:XIX.307.A.

2. The Commissioner of Conservation, the Secretary of the Department of Natural Resources, and the state of Louisiana shall be held harmless from and indemnified for any and all liabilities arising from temporary use of E and P Waste pursuant to this subsection, and the operator of record and the surface owner shall execute agreements as the commissioner requires for this purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2804 (December 2000), amended LR 33:1659 (August 2007), LR 35:2464 (November 2009).

James H. Welsh
Commissioner

0911#062

RULE

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

Insurance Requirements (LAC 55:IX:107)

The Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, in accordance with R.S. 40:1846 and with the Administrative Procedure Act., R.S. 49:950 et seq., hereby amends LAC 55:IX:107, Requirements. This text is amended to allow other forms of proof of insurance to Liquefied Petroleum Gas Commission as was ordered by full vote of the Liquefied Petroleum Gas Commission on June 17, 2009.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

§107. Requirements

A. - A.2. ...

3. Must have on file in the office of the director, proof of insurance, on a commission proprietary certificate of insurance, or one substantially equivalent, issued by a Louisiana licensed agent, in the minimum sum of \$1,000,000, in the classes of insurance as required by the commission. This certificate of insurance must show kinds and amount in force. This certificate of insurance will meet the proof of insurance as required by the commission. Said certificate shall be considered evidence of liability insurance coverage; said certificate must bear the clause that in the event the insurance company intends to cancel, the insurance company will attempt to notify the director of the Liquefied Petroleum Gas Commission 10 days prior to the date of cancellation. A binder of insurance coverage, within date, will be acceptable as proof of insurance until the policy is issued and a certificate of insurance can be issued. The \$1,000,000 requirement shall be effective on the first proof

of insurance required after November 1, 2003. The commission will provide the proprietary certificate of insurance form on its public web site for downloading or will provide copies of the proprietary certificate of insurance form via facsimile or via U.S. mail upon request.

A.3.a.-A.15. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, LR 1:315 (July 1975), LR 4:86 (March 1978), LR 7:633 (December 1981), amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 15:854 (October 1989), LR 16:1063 (December 1990), LR 20:1400 (December 1994), LR 24:461 (March 1998), LR 24:2311 (December 1998), LR 25:1262 (July 1999), LR 25:2410 (December 1999), LR 26:1487 (July 2000), LR 27:2256 (December 2001), LR 28:2553 (December 2002), LR 29:2509 (November 2003), LR 31:2567 (October 2005), LR 33:1140 (June 2007), effective July 1, 2007, LR 35:2465 (November 2009).

Jill P. Boudreaux
Undersecretary

0911#063

RULE

Department of Public Safety and Corrections Office of the Fire Marshal Code Enforcement and Building Safety

Emergency Elevator Access (LAC 55:V.Chapter 29)

In accordance with the provisions of R.S. 40:1582, relative to the authority of the Office of State Fire Marshal to promulgate and enforce rules, the Office of State Fire Marshal hereby adopts the following Rule regarding the regulation of emergency elevator access.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 29. Emergency Elevator Access

§2901. Master Elevator Keys

A. Each lock for all elevators in this state that permits public access must be keyed for operation by one master elevator key as required in these rules. The purpose of these rules is to allow all elevators within the state to be operated by firefighters and emergency responders in the event of an emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1582.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2466 (November 2009).

§2903. Statewide Access

A. Emergency elevator access shall be provided for each elevator that allows public access including, but not limited to, public elevators, service elevators, and freight elevators, in each of the following buildings in this state:

1 each building which is six or more stories in height, including, but not limited to, hotels and condominiums;

2. any building in this state which is six or more stories in height that has undergone substantial renovation after January 1, 2009.

AUTHORITY NOTE; Promulgated in accordance with R.S. 40:1582.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2466 (November 2009).

§2905. Requirements for Master Elevator Keys

A. All elevator keys within the state as set forth in these rules shall be uniform and specific for the state of Louisiana. All elevator keys will be cut to a uniform key code, specified as "LA-UEK".

B. Master elevator keys must be a patent protected design to prevent unauthorized duplication.

C. All elevator keys will be factory restricted (no uncut key blanks are to leave the factory) by the manufacturer to prevent the unauthorized distribution of key blanks.

D. Keys will feature angled cuts at varying depths to work in conjunction with elevating and rotating security pins in the corresponding locking device. Keys will also incorporate an additional side cut to operate a corresponding sliding element in the locking device.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1582.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2466 (November 2009).

§2907. Access to Master Elevator Keys

A. Master elevator keys shall be made available only to:

1. elevator owners or their authorized agents;
2. elevator contractors licensed by the state of Louisiana;
3. Louisiana state certified inspectors;
4. state agency representatives authorized by the Office of the State Fire Marshal;
5. the fire chief or his designee of the fire department in whose jurisdiction the building is located.

B. Information pertaining to obtaining elevator keys is available at www.lasfm.org

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1582.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2466 (November 2009).

§2909. Duplication of Elevator Keys Prohibited

A. No person may duplicate a Master Elevator Key.

B. All elevator keys subject to these rules are to be coined with "RESTRICTED—DO NOT DUPLICATE".

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1582.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2466 (November 2009).

§2911. Obtaining Elevator Keys

A. Persons authorized under this rule to possess a master elevator key shall apply to an authorized vendor using a master elevator key order form for the issuance of such key. The master elevator key order form may be obtained by

visiting the Office of the State Fire Marshal website located at www.lasfm.org.

B. Applicants must send the completed form to the authorized vendor or vendors by mail, fax, or email. Once the authorized vendor or vendors receives the completed form, keys will be provided.

C. Authorized vendors will maintain copies of master elevator key order forms for verification on all subsequent orders. Applicants only need to submit forms on the first order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1582.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2466 (November 2009).

§2913. Equivalency for Existing Buildings; Locking Cabinets; Lock Boxes.

A. The following equivalency applies only to existing buildings constructed before January 1, 2009.

B. If the local certified fire prevention bureau determines that it is technically, financially, or physically impossible to bring a building's elevators into compliance with this rule, the local certified fire prevention bureau may accept as an alternative the installation of an approved high security locking cabinet. The locking cabinet must be keyed with a single, jurisdiction specific, non-duplicable keyed rapid entry system and be UL 1037 listed. The locking cabinet shall be installed in accordance with this section.

C. The local certified fire prevention bureau's decision regarding the alternative measure may be appealed by the building owner to the State Fire Marshal whose decision shall constitute final agency action for purposes of Louisiana Statutes. An appeal may be instituted by the appellant writing a letter to the Office of State Fire Marshal, 8181 Independence Blvd., Baton Rouge, LA 70806.

D. Installation of Locking Cabinets

1. The locking cabinet is permitted to be installed surface or recess-mounted.

2. The locking cabinet's front cover shall be hinged on the right side and shall be permanently labeled with the words "Fire Department Use Only—Elevator keys."

3. The locking cabinet shall be mounted at each elevator bank at the lobby nearest to the lowest level of fire department access.

4. Locking cabinets are required to be mounted 5'6" above the finished floor to the right side of the elevator bank.

5. Contents of the locking cabinet are limited to the master elevator key, additional elevator access tools and/or keys and information pertinent to emergency planning or elevator access as deemed necessary by the local fire department having jurisdiction.

E. Multiple Elevator Banks

1. In buildings subject to these alternative provisions which house two or more different elevator banks, a single, approved locking cabinet may be used when such banks are separated by not more than 30 feet.

2. In the buildings specified in Subsection A with elevators or elevator banks separated by more than 30 feet, separate approved locking cabinets must be used for each individual elevator or elevator bank so separated.

3. In situations of multiple elevators or elevator banks or in situations of space constrictions or content needs, the local certified fire prevention bureau may approve use of a high security, lock box or cabinet where it is deemed necessary. The approved lock box or cabinet must utilize the same single, jurisdiction specific, non-duplicable keyed rapid entry system as the locking cabinet and be UL 1037 listed. Lock boxes or cabinets are to be mounted in accordance with the above outlined specifications for locking cabinets.

F. Owner shall provide one key for the lock box or cabinet if it exists and provide up to two keys to the local fire department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1582.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2467 (November 2009).

§2915 Administrative Fine; Penalty

A. Any person, business, or entity failing to comply with any provision of these rules shall be subject to an administrative fine of not more than one thousand dollars, in addition to any other penalty provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1582.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2467 (November 2009).

Jill P. Boudreaux
Undersecretary

0911#100

RULE

Department of Public Safety and Corrections Office of the Fire Marshal Code Enforcement and Building Safety

Industrialized Buildings (LAC 55:V.Chapter 27)

In accordance with the provisions of R.S. 40:1730.51 through 1730.66, relative to the authority of the Office of State Fire Marshal to promulgate and enforce rules, the Office of State Fire Marshal hereby adopts the following Rule regarding the regulation of industrialized buildings.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 27. Industrialized Buildings

§2701. Definitions

A. For the purpose of this Chapter, the following words, unless the context does not permit, shall have the meanings indicated.

Agency—an individual or entity, which may be a private sector entity, a state department or a local government determined by the State Fire Marshal to be qualified pursuant to this Chapter to inspect the construction of industrialized building units, systems, or the component parts thereof together with the pre-approved plans, specifications, and quality control procedures to ensure that such units, systems, or component parts are in full

compliance with the codes and standards herein adopted and to assign and attach the decal of the State Fire Marshal to such units complying with those standards.

Building Code—the Louisiana State Uniform Construction Code provided for in R.S. 40:1730.21 et seq.

Building Official—the officer or other designated authority or their duly authorized representative charged with the administration of the applicable technical codes in the subject jurisdiction.

Closed Construction—a building, component, assembly, subassembly, or system manufactured in such a manner that all portions cannot be readily inspected at the installation site without disassembly or destruction thereof.

Construction Site Building—a commercial structure that is not open to the public and is used for any purpose at a commercial site by a person constructing a building, road, bridge, utility, or other infrastructure or improvement to real property.

Council—the Louisiana State Uniform Construction Code Council.

Data Plate—a plate which is permanently mounted on an industrialized building or component which contains design information as noted in §2715 herein.

Dealer—any person, corporation or business which has been registered to engage in leasing, selling or distribution of industrialized buildings for placement in the state of Louisiana.

Decal—the approved form of label issued by the Office of State Fire Marshal to be permanently affixed to the building or module indicating that it has been constructed to meet or exceed the code requirements and in compliance with the provisions of this part.

Enforcement Agency—an agency of state or local government with authority to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures or facilities.

Equipment—all equipment, material, appliances, devices, fixtures, fittings or accessories installed in, or used in, the manufacture and assembly of an industrialized building.

Facility—the physical location of a manufacturing plant where buildings or components are constructed, or the physical location of a dealer where buildings or components are stored.

Industrialized Building—a commercial structure that is constructed in one or more modules or constructed using one or more modular components built at a location other than the commercial site; is designed to be used as a commercial building when the module or the modular component is transported to the commercial site and erected or installed; includes the structure's plumbing, heating, air conditioning, and electrical systems; includes a permanent commercial structure and a commercial structure designed to be transported from one commercial site to another commercial site. An *industrialized building* does not include a commercial structure that exceeds three stories or 49 feet in height as measured from the finished grade elevation at the building entrance to the peak of the roof. It does not include a commercial building or structure that is installed in a manner other than on a permanent foundation and is either

not open to the public or less than 1,500 square feet in total area and used other than as a school or a place of religious worship.

Installation—the assembly of an industrialized building component or system on site and the process of affixing an industrialized building component or system to land, a foundation, or an existing building, or service connections which are part thereof.

Labeled—affixed with a decal or data plate.

Manufacture—the process of making, modifying, fabricating, constructing, forming or assembling or reassembling a product from raw, unfinished, semifinished, or finished materials.

Manufacturer—any person who, or entity which, has been registered to produce or modify industrialized buildings for placement in the state of Louisiana.

Model—a specific design of industrialized buildings which is based on size, room arrangement, method of construction, location, arrangement or size of plumbing, mechanical or electrical equipment and systems therein in accordance with plans submitted to the Office of State Fire Marshal.

Modification—any change to an industrialized building which affects the structural, electrical, thermal, mechanical, plumbing systems, life safety, means of egress, material flammability/flare spread or accessibility of the building to persons with disabilities.

Modular Component—a structural part of a building constructed at a location other than the building site in a manner that prevents the construction from being adequately inspected for building code compliance at the building site without damage or removal and reconstruction of a part of the building.

Modular Section—see *module*.

Module—a three dimensional section of industrialized building designed and approved to be transported as a single section independent of other sections, with or without other modules or modular components, that prevents the construction from being adequately inspected for building code compliance without damage or removal and reconstruction of a part of the building.

Occupancy Classification—the purpose for which a building, or part thereof, is used or intended to be used as defined in the codes and standards adopted herein.

Open Construction—any industrialized building, building component, assembly or system manufactured in such a manner that all parts or processes of manufacture can be readily inspected at the installation site without disassembly, damage to or destruction thereof.

Quality Control Manual—a manual which contains all aspects of quality control procedures to be utilized by an entity or individual performing a function regulated hereby.

Standard Design—any building system, model, series or component intended for duplication or repetitive manufacture.

State Fire Marshal—the Louisiana Office of State Fire Marshal Code Enforcement and Building Safety.

Third-Party—an individual or individuals registered with the council as a code enforcement officer in accordance with R.S. 40:1730.34 through 1730.38 and LAC 55:VI:7.

Traveler—a form utilized in a manufacturing facility in conjunction with the manufacturer's quality control program

to indicate that all quality control inspections are conducted during the manufacturing process and that all inspections indicate compliance with the approved plans.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2467 (November 2009).

§2703. Administration and State Fire Marshal

Authority

A. Forms. A manufacturer's application for registration, a dealer's application for registration, a plan review application, a decal request form, and a decal disposition report per §2727 herein shall be submitted on forms provided by the State Fire Marshal.

B. Registration. The State Fire Marshal shall register manufacturers and dealers in accordance with this Chapter. All registrations and approvals granted by the State Fire Marshal pursuant to §2705 and §2707 herein are subject to revocation for failure to adhere to these rules, as provided for in §2729 herein.

C. Third-Parties. Third-parties shall be properly registered with the council for the type of project he or she will inspect.

D. Monitoring. The State Fire Marshal, through his employees or his designated performance auditors, shall monitor the performance of manufacturers, dealers, and third-parties.

E. Auditing. Each registered manufacturer shall be subject to a performance audit at a minimum of once every three years. Unannounced visits to manufacturing facilities may be utilized unless impractical. Information obtained through monitoring shall remain confidential to the extent permitted by law. Manufacturers shall provide the auditor access to records, facilities and personnel as requested by the auditor. The auditor shall collect information through interviews, examination of documents and observation of activity to determine whether the manufacturer complies with the applicable codes and standards. Any determination of nonconformance with any applicable provision shall be reported to the manufacturer. The report shall identify the facts that support the finding of nonconformity and recommend corrective action. The State Fire Marshal shall determine the appropriate corrective action subject to the requirements of §2729 herein.

F. Oversight. The manufacturer shall be responsible for correcting code violations. The State Fire Marshal shall make an independent determination regarding the existence of a violation. The State Fire Marshal may allow a third-party to investigate complaints and notify the State Fire Marshal regarding the existence of a code violation and disposition thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2469 (November 2009).

§2705. Manufacturer Registration

A. General. All individuals or entities manufacturing buildings or components intended for installation in Louisiana must be registered with the State Fire Marshal. In

the event that a manufacturer has more than one facility producing industrialized buildings, the manufacturer shall obtain registration for each such facility individually.

B. Initial Registration Requirements. A manufacturer must submit the following to the State Fire Marshal for registration:

1. a completed application for registration and a copy of a current valid contract with a third-party for inspection services;

2. description of manufacturing facility including at a minimum the size of shed(s) for weather protection of building materials and buildings under construction or repair, the size of yard at the facility for storing buildings, a site plan of the facility and a location map of the facility;

3. a quality assurance control manual in accordance with §2721.

C. Multiple Facilities. The manufacturer shall submit a separate application for each of its facility locations. A Quality Assurance Control Manual shall be kept at each location.

D. Renewal. The manufacturer shall renew its registration every 12 months and shall update the information required by §2705.B and submit to the State Fire Marshal. If the manufacturer does not complete the renewal information by the registration expiration date, registration becomes expired. The manufacturer must meet the qualifications in effect upon the date of renewal to have its registration renewed.

E. Change of Ownership. When the ownership of a manufacturer changes, the new owner shall within 21 days:

1. inform the State Fire Marshal in writing of such change of ownership with an effective date;

2. submit a completed manufacturer's application to the State Fire Marshal in accordance with §2705.

F. Change of Name and Address. In the event of a change in the name or mailing address of any manufacturer or inspection agency, the State Fire Marshal shall be notified in writing within 10 days.

G. Change or Additions to a Facility. In the event of a change or an addition to a facility, the manufacturer shall revise and resubmit all items as required by §2705.B to the State Fire Marshal prior to production of any buildings, modules, or components intended for sale in Louisiana.

H. Change of Manufacturer's Third-Party Inspection Agency

1. The manufacturer shall immediately inform the State Fire Marshal in writing of any change of third-party provider. No manufacturing shall be performed and no decals shall be placed on any industrialized building, module, or modular component until an approved third-party has been retained.

2. The manufacturer shall submit to the State Fire Marshal a copy of the service agreement with the new third-party agency reflecting the effective date.

3. The new third-party agency shall review the quality control manual of the manufacturer, perform an initial plant certification inspection, and provide a plant certification report to the State Fire Marshal in accordance with §2735 of this part.

I. Termination of State Registration. In the event that a manufacturer chooses to discontinue business in Louisiana, the State Fire Marshal shall be notified in writing at least

30 days prior to the effective date. Such notice shall serve as a resignation of the registration and any subsequent resumption of business activities will require a new submittal in accordance with §2735.B of this Section.

J. Transportation and Installation Booklet. Manufacturer shall provide a transportation and installation booklet with each new building and component package. It shall include:

1. precautions and instructions for transportation of buildings and modules;
2. installation instructions;
3. notice that a site-specific plan review submittal is required to be submitted to the State Fire Marshal in accordance with §2713.H of this Part prior to obtaining a building permit from the applicable jurisdiction;
4. notice that inspections by the State Fire Marshal are required prior to occupancy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2469 (November 2009).

§2707. Dealer Registration

A. All individuals or entities engaged in leasing or selling industrialized buildings or components for installation in Louisiana must be registered with the State Fire Marshal.

B. Initial Registration Requirements. A dealer must submit the following to the State Fire Marshal for registration:

1. a completed application for registration;
2. identification of principals which shall at a minimum include the positions of partners if the dealer is a partnership or its officers, directors, controlling owners and registered agent if the dealer is a corporation;
3. description of dealer's facility including at a minimum the size of shed(s) for weather protection of building materials and buildings under repair, the size of yard at the facility for storing buildings, a site plan of the facility and a location plan of the facility.

C. The dealer shall submit a separate application for each separate facility location.

D. Renewal. The dealer shall renew its registration every 12 months and shall update the information provided in §2735 of this part and submit to the State Fire Marshal. If the dealer does not complete the renewal information by the registration expiration date, registration becomes expired. The dealer must meet the qualifications in effect upon the date of renewal to have its registration renewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2470 (November 2009).

§2709. Reserved

§2711. Reserved

§2713. Design and Component Review

A. General. A plan approval of each building and modular component design shall be contingent upon compliance with the requirements of the State Fire Marshal, these rules, and the codes and standards referenced in R.S. 40:1730.56. The applicant shall submit plans for approval by

the Office of State Fire Marshal in accordance with R. S. 40:1730.59 and R. S. 40:1730.66. The Office of State Fire Marshal, upon review of the plans, may request any additional information necessary to evaluate the plans submitted and shall notify the applicant of any apparent errors or omissions. Manufacturing shall not commence until a complete plan review has been performed by either an approved third-party or the State Fire Marshal. Plan approvals are valid for 180 days from the date of the review, or until notification that the applicable standards referenced in R.S. 40:1730.56 are to be updated, modified, or changed, whichever is later.

B. Third-Party Plan Review

1. All building code plan reviews performed by a third-party must be documented in writing to the State Fire Marshal. The plan review report, as a minimum, shall contain the following information:

- a. name of registered third-party inspector and council issued registration number;
- b. name of manufacturer and State Fire Marshal issued registration number;
- c. date of plan review;
- d. the identification number or serial number of the building or component reviewed;
- e. a list of all applicable codes and editions reviewed for compliance;
- f. a statement indicating that information contained in the design plan submittal (pursuant to §2713.C) has been reviewed for compliance with the applicable codes;
- g. a full report indicating any nonconformities observed and corrective actions required.

2. A copy of the reviewed and approved plans shall be submitted with the plan review report to the State Fire Marshal for oversight along with any additional information required with the design plan submittal pursuant to §2713.C. Manufacturing may commence upon approval from the registered third-party; however, any additional deficiencies detected by the State Fire Marshal during the design plan submittal review shall be corrected. Decals shall not be affixed to the building or component until oversight has been performed by the State Fire Marshal.

C. Design Plan Submittal. Complete sets of design plans and specifications shall be prepared and sealed by an architect or engineer licensed to practice in the state of Louisiana when required by Louisiana law or by the State Fire Marshal. Plans shall be drawn to scale and shall be legible for reproduction purposes. Supporting calculations and any required test results shall also be provided for each building design to be reviewed. Information required with each design plan submittal shall be as indicated on the Industrialized Buildings Plan Review Checklist as provided by the State Fire Marshal. A computerized version in an acceptable electronic format shall also be provided for each standard design. The required information for each design shall be submitted with an industrialized building plan review application, a decal request form as provided by the State Fire Marshal, and the appropriate fees. The State Fire Marshal shall review the applicant's submittal and, if deficiencies are detected during the review, shall issue a plan review letter identifying the deficiencies. A revised submittal indicating corrections to these deficiencies shall be resubmitted to the State Fire Marshal within 21 days of the

date of the letter for further review. Once the submittal has been determined to have no deficiencies, the State Fire Marshal shall affix a stamp to each page of the plans and the specifications cover pages reviewed. The submittal package shall be returned with a review letter indicating the limitations of the review along with the requested decals. If corrections to deficiencies are not received within 21 days of the date of the letter, the project will be found to be "not in compliance." Plan review fees for submittals found "not in compliance" are not refundable.

D. Modular Component and Modular Section Review. The applicant shall submit to the State Fire Marshal for review a modular component or modular section which may include any or all elements for use as part of a building, such as structural, mechanical, plumbing, electrical components and/or fire protection systems. Submission shall include all applicable documents and data as indicated in the design plan submittal above, providing complete information necessary for evaluation of the component's performance and capabilities for its intended use.

E. Fire Protection Systems Review. Life safety and property protection systems must be submitted to the State Fire Marshal for review by a life safety and property protection contractor licensed by the State Fire Marshal pursuant to §2719 herein.

F. Equivalent Methods of Compliance. In accordance with R.S. 40:1730.61, any proposed equivalent or alternative materials or methods of compliance with the referenced codes and standards, except for the Louisiana State Plumbing Code, that are not expressly prescribed therein may be submitted to the State Fire Marshal for review. Justification for the request and supporting data shall be submitted with a proposed equivalency to code—request for appeal application provided by the State Fire Marshal and the appropriate review fee. If the State Fire Marshal determines, from an engineering performance standpoint, that sufficient evidence has been provided to substantiate that the proposed alternative is at least the equivalent of that prescribed by the referenced codes and standards, the State Fire Marshal may approve the use of such material or method. Such approval shall not be construed as an amendment to the technical codes and standards and shall only apply to the specific scope of work identified by a State Fire Marshal issued project number.

G. Scope of Plan Review. The scope of an industrialized building, modular component, or modular section plan review is limited to aspects of construction performed at the place of manufacture. The industrialized building plan review letter shall not be used to obtain a permit for site installation.

H. Site-Specific Plan Review Submittal. Industrialized buildings manufactured and decaled pursuant to §2723 herein, purchased and ready for site-specific installation, shall be submitted to the State Fire Marshal by the owner or his authorized agent for review and approval in accordance with R. S. 40:1730.66 and R.S. 40:1574, prior to obtaining a building permit from the applicable jurisdiction. The industrialized building decal number shall be provided by the owner upon submittal to the State Fire Marshal for this site-specific review.

I. Manufacturer's Modular Data Plate. The manufacturer shall install on all industrialized (modular) buildings and components, prior to leaving the manufacturing plant, a data plate which shall be permanently mounted on or about the electrical panel, if provided, or as documented on approved plans, and which shall contain, but not be limited to, the following design information when applicable:

1. manufacturer;
2. manufacturer registration number;
3. date of manufacture;
4. date of alteration, if any;
5. number of modules (decal and data plate must be installed on each module);
6. construction type;
7. occupancy use classification;
8. serial number;
9. fire marshal plan review number(s);
10. maximum floor load(s) (pounds per square foot, first floor and upper floors), live load and concentrated load;
11. roof load; live load and snow load;
12. wind velocity rating;
13. "R" value of floor, wall, and roof;
14. approved for flood zone usage (yes/no).

J. Plan Review Fee Schedule. Pursuant to R.S. 40:1730.60 and §2715 herein, the fee for review of plans and specifications of industrialized buildings, modules and modular components by the Office of State Fire Marshal shall be in accordance with the following schedule. The fee applies to the primary occupancy class of the building, but includes square footage for the total building, even where composed of separate occupancy classes, incidental uses or accessory uses. For each standard design, a separate fee will be applied to each primary occupancy class utilizing that design. Review fees for fire protection and all other systems are separate and shall be as indicated on the plan review fee computation schedule as provided by the State Fire Marshal.

Occupancy	Square Footage	Review Fee
Assembly Groups A-1, A-2, A-3, A-4, A-5	0 - 2500	= \$335.00
	2,501 - 4,500	= \$505.00
	4,501 - 10,000	= \$1,220.00
	10,001 - 50,000	= \$1,806.00
	50,001 - 100,000	= \$2,365.00
	100,001 and over	= \$2,515.00 + .01/sq ft over 100,000sq ft
Educational or Daycare Groups E, I-4	0 - 5,000	= \$335.00
	5,001 - 10,000	= \$505.00
	10,001 - 30,000	= \$740.00
	30,001 - 80,000	= \$1,330.00
	80,001 - 150,000	= \$1,920.00
150,001 and over	= \$2,020.00 + .01/sq ft over 150,000sq ft	

Occupancy	Square Footage	Review Fee
Health Care, Institutional, or Detention (Includes Limited Care/Assisted Living facilities) Groups I-2, I-3	0-2,000	= \$485.00
	2,001-5,000	= \$715.00
	5,001-10,000	= \$970.00
	10,001-20,000	= \$1,320.00
	20,001-30,000	= \$1,420.00
	30,001-50,000	= \$2,400.00
	50,001-100,000	= \$2,990.00
	100,001 and over	= \$3,190.00 + .02/sq ft over 100,000sq ft
Hotels, Dormitories, Apartments, Lodging or Rooming Houses, Residential Board and Care Facilities Groups R-1, R-2, R-3, R-4, I-1	0-2,500	= \$335.00
	2,501-10,000	= \$505.00
	10,001-30,000	= \$1,220.00
	30,001-80,000	= \$1,810.00
	80,001-150,000	= \$2,400.00
	150,001 and over	= \$2,500.00 + .01/sq ft over 150,000sq ft
Business or Mercantile Groups M, B	0-3,000	= \$335.00
	3,001-10,000	= \$505.00
	10,001-30,000	= \$695.00
	30,001-50,000	= \$1,035.00
	50,001-150,000	= \$1,330.00
	150,001 and over	= \$1,430.00 + .01/sq ft over 150,000sq ft
Industrial or Storage Groups F-1, F-2, S-1, S-2, U	0-10,000	= \$335.00
	10,001-20,000	= \$505.00
	20,001-50,000	= \$695.00
	50,001-100,000	= \$865.00
	100,001 and over	= \$945.00 + .01/sq ft over 100,000sq ft
High Hazard Groups H-1, H-2, H-3, H-4, H-5	0-2,000	= \$495.00
	2,001 and over	= \$495.00 + .30/sq ft over 2,000sq ft

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2470 (November 2009).

§2715. Modifications or Alterations to Decaled Buildings

A. Any unauthorized modification, alteration, or conversion made to an industrialized building, modular component, or modular section previously approved by the State Fire Marshal shall void the decal of approval. The decal affixed to the building shall be removed in accordance with §2729 herein.

B. Pursuant to R.S. 40:1730.56.B, a change in the use of an industrialized building shall be subject to the requirements established for renovations. As such, the provisions of this Section shall apply to such buildings. The provisions of this Section shall not apply to a change in use of an industrialized building which is not accessible by the public.

C. Minor modifications to approved designs during the manufacturing process shall be submitted to the State Fire Marshal for further review and approval prior to decal placement. Major modifications shall be resubmitted for review with information as required by §2713 herein. The classification of scopes of work as minor or major modifications shall be subject to the discretion of the State Fire Marshal.

D. Modifications to existing industrialized buildings bearing a decal that are made other than at the initial manufacturing site shall be approved by the State Fire Marshal.

1. The manufacturer or dealer must provide the State Fire Marshal with a set of the original approved plans of the building, revised plans reflecting the proposed modifications, a decal request form, and any additional information as required in §2713 herein. No work shall begin until the plans have been approved by the State Fire Marshal.

2. The State Fire Marshal, a third-party, or the building official for the jurisdiction in which the building is located shall be retained by the manufacturer or dealer in order to provide complete inspections during every stage of construction. Once the agency has tested and/or evaluated each system in the building and certifies to the Office of State Fire Marshal that the building is in compliance with the applicable codes, the Office of State Fire Marshal will authorize placement of an additional decal to be affixed to the building beside the original decal.

3. Pursuant to R.S. 40:1730.58.C, where the cost of the modification or alteration exceeds 50 percent of the value of the modules or modular components, the entire building shall be made to comply with the current adopted edition of the codes. Where the cost of the modification or alteration is less than 50 percent of the value of the modules or modular components, only portions of the building affected by the modification shall be required to comply with the current adopted edition of the codes.

4. A building bearing an approved decal for the recertification shall be deemed to comply with the requirements of all state adopted codes and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2472 (November 2009).

§2717. Industrialized Buildings Constructed Prior to January 1, 2007

A. Pursuant to R.S. 40:1730.56.B, industrialized buildings constructed prior to January 1, 2007 shall meet or exceed the requirements established by the parish or municipality in which the building is to be located at the time of construction of the industrialized building. If the

parish or municipality has not established requirements, compliance with the wind and flood provisions as adopted by the Louisiana State Uniform Construction Code Council shall be required as a minimum standard. Pursuant to R.S. 40:1730.64.D, the State Fire Marshal may approve previously manufactured industrialized buildings when the State Fire Marshal determines that the adopted standards of other states are reasonably consistent with those of the building code in effect at the time of unit manufacture. The previously manufactured industrialized building shall be required to bear a data plate indicating the codes in effect at the time of unit manufacture and any other state labels that are applicable. As such, manufacturers or dealers may apply to the State Fire Marshal for decal placement on buildings that were constructed prior to January 1, 2007.

B. The following shall be required to be submitted to the State Fire Marshal for review when decals are requested:

1. a complete design plan submittal as indicated in §2713 herein;
2. documentation indicating the date of manufacture, serial number of the building, and the applicable codes and editions to which the building was manufactured;
3. documentation indicating approval under an industrialized building program of another state, if applicable;
4. data plate information;
5. the original third-party plan review letter and inspection reports documenting compliance with the codes indicated.

C. The State Fire Marshal shall review the documentation and issue a letter indicating the findings.

1. If found to comply with, as a minimum, the adopted wind and flood provisions, a unique identifiable decal as described in §2723.K herein will be issued to be affixed to the building.

2. If deficiencies are discovered during the review, the procedures indicated in §2713.C herein shall apply.

3. Any required corrections shall be inspected at the place of manufacture in accordance with §2735 herein, or shall be completely inspected by the State Fire Marshal, a third-party, or the building official for the jurisdiction in which the building is located during every stage of modification.

4. A decal disposition report shall be submitted to the State Fire Marshal per §2723 herein.

5. Where modifications are required, all inspection reports shall be submitted to the State Fire Marshal with the disposition report.

D. Site-specific installation of buildings constructed prior to January 1, 2007 that bear a decal are subject to verification by the building official for the jurisdiction in which the building is to be located that the building meets or exceeds the requirements established by the jurisdiction at the time of construction of the industrialized building, in accordance with R.S. 40:1730.56.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2472 (November 2009).

§2719. Manufacture and Installation of Life Safety and Property Protection Systems

A. All life safety and property protection systems, including but not limited to, fire sprinkler, fire alarm, fire suppression, electronic locking, closed circuit television, and security systems, must be integrated, installed, certified and serviced by a life safety and property protection contractor properly licensed by the State Fire Marshal pursuant to R.S. 40:1664.1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2473 (November 2009).

§2721. Manufacturer's Quality Control Manual

A. The manufacturer shall maintain, at each site of manufacture of industrialized buildings, a quality control manual. The manufacturer's quality control manual shall at a minimum contain the following information.

1. Organizational element:
 - a. introduction of the manufacturer—a brief history which shall, at a minimum, include the length of time that the manufacturer has been in the industrialized buildings industry, where it is incorporated, whether it is a division of any parent organization, the identity of products it manufactures, and the location of the facility;
 - b. identification of principals and the positions of partners if the manufacturer is a partnership or its officers, directors, controlling owners and registered agent if the manufacturer is a corporation;
 - c. an organizational chart showing responsible management and supervisory positions by title. A job description for each of the positions shall be provided;
 - d. brief qualifications of all personnel in management and supervisory positions including the quality control manager;
 - e. administrative procedure for revision of quality control procedure and quality control manual;
 - f. procedure for retaining permanent records of plans, travelers, inspection reports, serial numbers of buildings, decals used, first destination of labeled buildings or components;
 - g. method and frequency for training of quality control and production personnel.
2. Design and specification control:
 - a. procedures for revisions to plans;
 - b. recording system of drawings and specifications.
3. Material control:
 - a. inspection procedure of materials, equipment and supplies when received;
 - b. method of storing and protection of building materials and equipment against damage;
 - c. provision for disposal of rejected materials, equipment and supplies;
 - d. forms used.
4. Production control:
 - a. a description of manufacturing process—method and sequence of construction;
 - b. check lists of material specifications and workmanship inspections performed at each stage of

production by supervisors, corrective actions taken, use of traveler;

- c. frequency of quality control inspections;
- d. list of tests to be performed, testing equipment, results and technical data acceptable;
- e. procedures for timely preventive and remedial measures;
- f. assignment of authority to accept or reject work;
- g. provision for disposition of rejected items;
- h. forms used.

5. Finished product control and identification of products:

- a. procedure for handling and storage of finished buildings/modules and components;
- b. preparation for shipping, transportation, and delivery;
- c. serial numbering system of buildings or components and location of the serial number not readily removable;
- d. location of manufacturer's data plate. Information to contain in the data plate;
- e. location of Louisiana State decal;
- f. forms used.

6. A copy of the initial plant certification report in accordance with §2735 herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2473 (November 2009).

§2723. Decal Application and Issuance

A. Each industrialized building, modular section and modular component approved by the State Fire Marshal shall be affixed with a Louisiana State Fire Marshal Industrialized Building Decal after favorable plan review and inspection in accordance with §2713 and §2735 herein. The decal shall indicate acceptance of construction approved by the design plan review and inspected at a place other than at the site of installation.

B. The manufacturer or dealer shall file with the State Fire Marshal a decal disposition report no later than the tenth day of the following month for the preceding month's activity, until all decals in the possession of the manufacturer or dealer have been affixed and are accounted for.

1. The disposition report shall be filed on a form provided by the State Fire Marshal and shall contain, as a minimum, the following information:

- a. the State Fire Marshal issued decal number for each unit manufactured or modified;
- b. the State Fire Marshal issued plan review number for the building or component;
- c. the identification number or serial number of the building or component;
- d. the date(s) of inspection and;
- e. the date of decal placement.

2. Inspection reports as required by §2715, §2717, or §2735 herein shall accompany each disposition report.

C. The control of the decals shall remain with the Office of State Fire Marshal and will be revoked by the State Fire Marshal in the event of violation of the conditions of approval. All such voided decals shall be returned to the Office of State Fire Marshal.

D. Decals shall be obtained utilizing a request form provided by the State Fire Marshal. One request form shall accompany each industrialized building plan review application required with each design submitted for review in accordance with §2713 herein and shall indicate the number of modules intended to be manufactured for the design submitted.

E. Upon design plan submittal approval, decals shall be provided as requested to the manufacturer or dealer. Additional decals may be ordered at any time after the initial plan review and approval has been completed. The plan review project number issued by the State Fire Marshal for a specific design shall be indicated on the decal(s) issued.

F. The third-party, the manufacturer's quality assurance person, or the State Fire Marshal shall affix the decals to the corresponding approved buildings only after inspection in accordance with §2715, §2717, or §2735 herein and determination that the building or component is in compliance with the approved design plan submittal and State Fire Marshal requirements.

G. Assigned decals are not transferable from one building to another or from one manufacturer or dealer to another manufacturer or dealer. Decals issued with each design plan submittal approval shall only be placed on the corresponding approved building or component. Decals not used within three years of issuance shall be returned to the State Fire Marshal.

H. After a decal has been affixed to a building or component, alterations may be made only in accordance with §2715 herein.

I. Decals shall not be affixed to an industrialized building, modular section or modular component which has deficiencies or does not conform to the approved plans. Violation of this section shall be subject to the penalties and fines indicated in §2729 herein.

J. Construction Site Buildings. Pursuant to R.S. 40:1730.63.B, buildings that are manufactured only for use as temporary construction site buildings shall be exempt from these decal provisions.

K. Industrialized Buildings Constructed Prior to January 1, 2007. Decals issued pursuant to §2717 herein shall have a unique color, shape, or markings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2474 (November 2009).

§2725. Reserved

§2727. Reserved

§2729. Removal of Decals, Penalties and Fines Imposed

A. The State Fire Marshal, upon notice that a building, module, or modular component bearing a decal is in violation, shall furnish the building manufacturer or dealer in possession of the decal with a written notice of such violations.

B. The manufacturer or dealer shall respond within 21 days of such notice with a plan of correction. If modifications are required to bring the building or component into compliance, the provisions of §2715 herein shall apply.

C. The State Fire Marshal or his authorized agent, the manufacturer, or the dealer shall remove the decal from the

building, module, or modular component found to be in violation within 21 days of the notice and shall return the decal to the State Fire Marshal.

D. Decals for previously issued units of the same design also determined to be in violation shall be deemed void and shall also be returned to the State Fire Marshal.

E. Applications for decals for new units by a manufacturer previously determined to be in violation will be denied until the plan of correction has been approved and compliance has been verified.

F. A fine not to exceed \$200 per day for each day over 21 days may be levied until such decals has been returned to the State Fire Marshal, pursuant to 40:1563.4.

G. Any manufacturer, dealer, or third-party found to repetitively violate these Rules, applicable laws or codes of the state of Louisiana shall be grounds for revoking registration of the manufacturer or dealer and recommendation to revoke registration of the responsible third-party. Three written notices of violations issued within a three year period to a manufacturer, dealer, or third-party shall be considered repetitive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2474 (November 2009).

§2731. Reserved

§2733. Reserved

§2735. Inspections; Inspection Reports

A. Responsibilities of Third-Party Inspectors. Each third-party inspector retained by a registered manufacturer shall discharge the following responsibilities:

1. performing an initial plant certification inspection;
2. monitoring of the quality assurance procedures at the site of manufacture;
3. verifying that industrialized buildings, modules and modular components have been manufactured pursuant to State Fire Marshal approved building system documentation and in accordance with the approved quality assurance procedures;
4. authorizing the attachment of decals to such industrialized buildings, modules and modular components;
5. preparation of all reports as may be required by this Chapter.

B. Initial Plant Certification Inspection

1. No decal shall be affixed to any industrialized building, module or modular component until the third-party inspector has completed an initial plant certification inspection of the manufacturer's facility, unless in accordance with §2735.F herein.

2. The initial plant certification inspection shall consist of a complete evaluation of the manufacturer's adherence to its quality assurance procedures and capability of producing an industrialized building, module or modular component, in accordance with the approved building system.

3. The third-party shall become familiar with every aspect of the manufacturer's approved building system and quality assurance procedures.

4. The third-party shall make a complete inspection of the manufacture of at least one industrialized building and any module or modular component pertaining to that

particular building throughout all of the operation in the facility. If the first building inspected or any component pertaining to that particular unit fails to conform to the standards, additional buildings and component shall be similarly inspected until the inspector is satisfied that the manufacturer is complying with the approved building system and the building code.

C. Plant Certification Report. If, on the basis of the initial plant certification inspection, the third-party determines that the manufacturer is in compliance with its approved quality assurance procedures, the third-party shall prepare and forward to the State Fire Marshal a certification report. The certification report shall include:

1. the name, address, and State Fire Marshal registration number of the manufacturing facility;
2. the name(s) of the third-party inspector(s) that approved the manufacturer's building system and quality assurance procedures, and the dates of approval;
3. the name(s) of the third-party inspector(s) that performed the initial plant certification inspection;
4. the serial numbers and the State Fire Marshal project number(s) assigned to the industrialized buildings, modules or modular components inspected;
5. a full report of all inspections conducted, any nonconformity observed, and corrective actions taken;
6. the date of certification.

D. Inspection Reports. Third-party inspectors shall inspect construction throughout the manufacturing process and shall document their findings in writing to the State Fire Marshal.

1. The inspection report, as a minimum, shall contain the following information:

- a. name of registered third-party inspector and council issued registration number;
- b. name of manufacturer and State Fire Marshal issued registration number;
- c. date of inspection;
- d. the State Fire Marshal issued plan review number of each building or component inspected;
- e. the identification number or serial number of each building or component inspected;
- f. a full report of all inspections conducted, any nonconformity observed, and corrective actions taken;
- g. a statement indicating that the construction is in accordance with the stamped set of State Fire Marshal approved plans;
- h. a statement indicating that the actual inspection was performed at the manufacturer's facility as registered with the State Fire Marshal.

2. The inspecting agency shall keep a copy of all inspection reports for a minimum of five years.

E. Frequency of Inspections

1. After initial plant certification, the third-party inspector shall inspect:

- a. each industrialized building, module, or modular component in at least one stage of construction;
- b. every stage of construction during the course of each inspection visit to a manufacturing facility.

2. The third-party shall conduct unannounced inspections at the manufacturing site to review any aspects of the manufacturing process.

3. Nothing in this Paragraph shall preclude a third-party from conducting inspections at a greater frequency than the minimum prescribed herein if, in the inspector's professional judgment, such action is necessary to discharge its responsibilities properly.

F. The State Fire Marshal may temporarily waive compliance with the quality assurance manual at the request of the manufacturer. Upon the grant of such waiver, the manufacturer shall have each industrialized building and any module or modular component which it produces completely inspected during every stage of construction by a third-party inspector.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.51 through 1730.66.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Fire Marshal Code Enforcement and Building Safety, LR 35:2475 (November 2009).

§2737. Reserved.

§2739. Reserved.

Jill P. Boudreaux
Undersecretary

0911#099

RULE

Department of Public Safety and Corrections Uniform Construction Code Council

Temporary Exemption to Certification Requirement (LAC 55:VI.903)

In accordance with the provisions of Act 12 of the 2005 First Extraordinary Session, R.S. 40:1730.22(C) and (D) and R.S. 40:1730.34(B) relative to the authority of the Louisiana State Uniform Construction Code Council to promulgate and enforce rules, the Louisiana State Uniform Construction Council amends Chapter 9 to extend the time period within which building code enforcement officers must satisfy the certification requirements.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 9. Temporary Exemption to Certification Requirement

§903. Employment Prior to January 1, 2007

A. Certificates of Registration may be issued without certification by a recognized code organization or testing agency to building code enforcement officers already employed in code enforcement on January 1, 2007, only for the position and locality held at the time of registration. This registration is valid for three years for building officials and six months for building inspectors and plans reviewers. Additionally, inspectors and plan reviewers who were employed by an authority having jurisdiction before July 1, 2006, and remain employed by that authority having jurisdiction, an additional 30 month provisional certificate or registration may be granted provided the individual can demonstrate an annual minimum of three continuing

education units for a core discipline as required in §703. Thereafter, anyone renewing this certificate of registration shall satisfy the certification requirement(s) as set forth in §703.

B. The building code enforcement officers designated in Paragraph A above shall have until January 1, 2012, to satisfy the certification requirements as set forth in §703 of this Part. Officials availing themselves of this provision shall obtain the required continuing education units and have attempted at least one International Code Council certification exam by January 1, 2010. Failure to do either shall result in the revocation of that official's provisional certificate of registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1730.22(C) and (D)

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Code Council, LR 33:293 (February 2007), amended LR 35:2476 (November 2009).

Jill Boudreaux
Undersecretary

0911#009

RULE

Department of the Treasury Board of Trustees of the Louisiana State Employees' Retirement System

DROP Disbursements (LAC 58:I.2713)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58:I.2713, regarding mandatory DROP distributions to reflect the annual nature of that process. This Rule change complies with and is enabled by R.S. 11:515.

Title 58

RETIREMENT

Part I. Louisiana State Employees' Retirement System Chapter 27. DROP Program Subchapter C. Withdrawal §2713. Time for Disbursement

A. - B. ...

C. When a retiree reaches age 70 1/2, mandatory annual distributions shall begin in accordance with IRS regulations. The amount of the distributions will be recalculated annually. The mandatory distribution is based on the retiree's age and DROP account balance using the table above.

D. ...

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 25:2466 (December 1999), LR 29:1121 (July 2003), LR 30:2079 (September 2004), LR 32:1070 (June 2006), LR 35:2476 (November 2009).

Cindy Rougeou
Executive Director

0911#040

RULE

**Department of the Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System**

Public Safety Services Secondary Component
(LAC 58:I.3901)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has repealed LAC 58:I.3901, regarding retirement eligibility for members of the Public Safety Services Secondary Component. This Rule change complies with and is enabled by R.S. 11:515.

Title 58

RETIREMENT

**Part I. Louisiana State Employees' Retirement System
Chapter 39. Public Safety Services Secondary
Component**

§3901. Additional Retirement Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 29:2859 (December 2003), repealed LR 35:2477 (November 2009).

Cindy Rougeou
Executive Director

0911#042

RULE

**Department of the Treasury
Board of Trustees of the Louisiana
State Employees' Retirement System**

Voluntary Deductions from Retiree Benefits Payroll
(LAC 58:I.Chapter 11)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended LAC 58:I.1101-1119, regarding Voluntary Deductions from Retiree Benefits Payroll. This Rule change complies with and is enabled by R.S. 11:515.

Title 58

RETIREMENT

**Part I. Louisiana State Employees' Retirement System
Chapter 11. Voluntary Deductions from Retiree
Benefits Payroll**

§1103. Vendor Requirements

A. Authority for payroll deductions shall be governed by this Chapter. General insurance deduction vendors shall meet the following requirements.

1. Foreign companies shall:

a. have a current rating in A.M. Best of B+ or better, unless:

i. notwithstanding any other law, rule, or regulation to the contrary, and if they are in good standing with the Department of Insurance, and subject to the other

applicable provisions of this Section, a foreign company which has participated in the Office of State Uniform Payroll deduction system for a period of at least ten years and has a rating in A.M. Best of B, may continue to market and sell insurance policies through payroll deduction until the beginning of the next open enrollment period following the four-year anniversary date from the date of the issuance of the B rating by A.M. Best, provided they have maintained a rating of B or better for the entire four-year period. Thereafter, in the event that the foreign insurer has maintained a rating of B by A.M. Best and that rating is increased from B to a B+ or better and they meet the other applicable requirements of this Section and other applicable rules and regulations, they may resume marketing and selling insurance through the payroll deduction system; or

ii. notwithstanding any other law, rule, or regulation to the contrary, if a foreign company has been participating in the Office of State Uniform Payroll deduction system for a period of at least ten years, and they have a rating in A.M. Best of B, they may maintain and administer indefinitely those policies purchased through payroll deduction as long as they maintain a rating by A.M. Best of no less than a B, are in good standing with the Department of Insurance, and comply with other applicable rules, and regulations, and laws and the provisions of this Section;

b. have been doing business under the same name for not less than three years;

c. offer like product, service, or coverage to citizens of Louisiana;

d. be in compliance with all procedural, accounting, and reporting requirements governing employee deductions.

2. Domestic companies shall:

a. have a current rating in A.M. Best of B or better, or if the company is of insufficient size to obtain a rating by A.M. Best, has posted a bond with the division of administration in the amount of:

i. \$100,000, if the company is a member insurer of the Louisiana Life and Health Insurance Guaranty Association; or

ii. \$250,000, if the company is not a member insurer of the Louisiana Life and Health Insurance Guaranty Association, or if the product for which the deductions are proposed is not covered under the Louisiana Life and Health Guaranty Association Act;

b. have been doing business under the same name for not less than three years;

c. provide like product, service, or coverage to citizens of Louisiana;

d. be in compliance with all procedural, accounting, and reporting requirements of all rules and requirements governing employee deductions.

3. Vendors offered through other state agencies or political subdivisions, if approved by the executive director.

B. 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 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 33:676 (April 2007), LR 34:1639 (August 2008), LR 35:2477 (November 2009).

§1105. Notification, Implementation and Transition

A. - B. ...

C. Participation shall be at least 30 or more retirees, if approved by the executive director.

D. If a vendor falls below the participation level approved by the executive director, LASERS has the right to discontinue the payroll deduction immediately.

E. 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 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1107. Deduction Authorization

A. - C. ...

D. Vendor is responsible for submitting a computer file of monthly deductions to LASERS by the twelfth day of the month preceding the deduction using the electronic format and specifications established by LASERS. All deductions for a single vendor shall be submitted on one monthly file.

E. A retiree may discontinue any voluntary payroll deduction amount by providing written notification of that intent to the vendor. Vendors shall remove these persons from the file.

F. A retiree cannot authorize total deductions which exceed the amount of the benefit.

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 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1109. Solicitation of State Retirees

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 18:1417 (December 1992), amended LR 22:373 (May 1996), repealed LR 35:2478 (November 2009).

§1111. Vendor Responsibilities

A. Vendors shall not be authorized to submit any deduction which was obtained from a retiree for the purpose of transmitting any part of that deduction to a third party.

B. The vendor is responsible for refunding any amounts deducted in error to the individual retiree.

C. Any information received from LASERS shall be handled in accordance with the Louisiana Public Records law.

D. - K. 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 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1113. LASERS' Responsibilities

A. LASERS shall be responsible for making the monthly deductions in the amount that are timely submitted by the vendor.

B. LASERS shall remit the amount deducted to the vendor and shall provide a listing of all exceptions.

C. 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 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1115. Reporting

A. ...

B. - D. 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 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

§1117. Fees

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 18:1417 (December 1992), amended LR 22:373 (May 1996), repealed LR 35:2478 (November 2009).

§1119. Termination of Payroll Deduction

A. ...

B. Payroll deduction authority may be revoked for any vendor that is removed from the annual listing maintained by the Office of State Uniform Payroll.

C. Payroll deduction authority may be revoked for any vendor that fails to comply with requirements of this rule.

D. 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 18:1417 (December 1992), amended LR 22:373 (May 1996), LR 35:2478 (November 2009).

Cindy Rougeou
Executive Director

0911#041

RULE

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

**General and WMA Turkey Hunting Regulations
(LAC 76:XIX.113)**

The Wildlife and Fisheries Commission does hereby amend the turkey rules and regulations for the 2010 season.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§113. General and WMA Turkey Hunting Regulations

A. General Regulations. Only gobblers (male turkeys) may be taken. Taking of hen (female) turkeys, including bearded hens, is prohibited. Still hunting only. Use of dogs, electronic calling devices and live decoys is illegal. Turkeys may be hunted with shotguns, including muzzleloading shotguns, using shot not larger than #2 lead or BB steel shot, and approved archery equipment but by no other means. Shooting turkeys from a moving or stationary vehicle is

prohibited. Shotguns capable of holding more than three shells prohibited. The running of coyote with dogs is prohibited in all turkey hunting areas during the open turkey season. No person shall hunt, trap or take turkeys by the aid of baiting or on or over any baited area. Baiting means placing, exposing, depositing or scattering of corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed so as to constitute a lure, attraction or enticement to, on or over any areas where hunters are attempting to take turkeys. A baited area is any area where corn (shelled, shucked or unshucked), wheat or other grain, salt, or other feed capable of luring, attracting or enticing turkeys is directly or indirectly placed, exposed, deposited, distributed or scattered. Such areas remain baited areas for 15 days following complete removal of all such corn, wheat or other grain, salt, or other feed. Wildlife agents are authorized to close such baited areas and to place signs in the immediate vicinity designating closed zones and dates of closures. No person hunting turkeys more than 200 yards from a baited area will be in violation of the turkey baiting regulation.

B. Tags

1. Prior to hunting turkeys, all turkey hunters, regardless of age or license status, must obtain turkey tags and have them in their possession while turkey hunting. Immediately upon killing a turkey, hunters must attach a carcass tag to the turkey before it is moved from the site of the kill and must document the kill on the turkey harvest report card. The date of kill and parish of kill must be recorded on the carcass tag. The tag must remain attached to the turkey while kept at camp or while it is transported to the domicile of the hunter or to a cold storage facility. Hunters who keep the carcass or meat at a camp must also comply with game possession tag regulations. Within 72 hours of the kill, the hunter must report the kill and record the validation number on the turkey harvest report card. Hunters may report turkeys by calling the validation phone number or using the validation web site.

2. Turkey hunters purchasing licenses by phone or internet will be given an authorization number and a LDWF identification number that will serve as their license and tags until the physical license and tags arrive by mail. Turkey hunters who have purchased a license with tags, but have not yet received their physical license and tags, must immediately tag their kill with a possession tag before moving it from the site of the kill. The authorization number and LDWF identification number must be recorded on the possession tag. Hunters must retain documentation of any turkeys killed and upon receiving their physical tags and harvest report card, validate their kill as required in these regulations. The tags for turkeys killed prior to receiving the physical tags must be removed from the turkey harvest report card and discarded.

3. Tags removed from the turkey harvest report card prior to killing a turkey are no longer valid and if lost will not be replaced. Duplicate tags and turkey harvest report cards are available to replace lost report cards and attached tags. Hunters will be charged a fee for duplicate turkey harvest report cards and tags. Hunters that have killed a turkey prior to losing their remaining tag and harvest report card must remove and discard the duplicate tag to account

for the original tag that was used and validated. Hunters must record any previously validated turkey on the duplicate turkey harvest report card.

C. Possession of Live Wild Turkeys. No person shall take live wild turkeys or their eggs from the wild. No person shall possess captive live wild turkeys, (*Meleagris gallopavo silvestris*, *M. g. osceola*, *M. g. intermedia*, *M. g. merriami*, *M. g. mexicana*) or their eggs, regardless of origin, without a valid game breeder license. No pen-raised turkeys from within or without the state shall be liberated (released) within the state.

D. Statewide Youth and Physically Challenged Season Regulations. Only youths 17 years of age or younger or hunters possessing a Physically Challenged Hunter Permit with wheelchair classification may hunt. Youth must possess a hunter safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of hunter safety certification, a valid hunting license or proof of successful completion of a hunter safety course, this requirement is waived for youth younger than 16 years of age. Adults accompanying youth may not possess a firearm or bow. Youths may possess only one firearm or bow while hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Only one gobbler per day may be taken and any gobbler taken by the hunter during this special season counts towards their season bag limit of 2.

E. Shooting hours: one-half hour before sunrise to one-half hour after sunset.

F. Turkey Hunting Area Descriptions

1. Area A

- a. All of the following parishes are open:
 - i. Beauregard;
 - ii. Bienville;
 - iii. Claiborne (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - iv. East Baton Rouge;
 - v. East Feliciana;
 - vi. Grant (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - vii. Jackson;
 - viii. LaSalle;
 - ix. Lincoln;
 - x. Livingston;
 - xi. Natchitoches (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xii. Rapides (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xiii. Sabine;
 - xiv. St. Helena;
 - xv. Tangipahoa;
 - xvi. Union;
 - xvii. Vernon (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);
 - xviii. West Baton Rouge;
 - xix. West Feliciana (including Raccourci Island);
 - xx. Winn (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

- b. Portions of the following parishes are also open:
 - i. Allen—North of LA 104, west of LA 26 south of junction of LA 104 to US 190, north of US 190 east of Kinder, west of US 165 south of Kinder;
 - ii. Avoyelles—That portion bounded on the east by the Atchafalaya River, on the north by Red River to the Brouillette Community, on the west by LA 452 from Brouillette to LA 1, on the south by LA 1, eastward to Hamburg, thence by the West Atchafalaya Basin Protection levee southward;
 - iii. Calcasieu—North of I-10;
 - iv. Caldwell—West of Ouachita River southward to Catahoula Parish line;
 - v. Catahoula—South and west of the Ouachita River from the Caldwell Parish line southward to LA 8 at Harrisonburg, north and west of LA 8 from Harrisonburg to the LaSalle Parish line. ALSO that portion lying east of LA 15;
 - vi. Evangeline—North and west of LA 115, north of LA 106 west of LA 115 to US 167, west of US 167 south to LA 10, north of LA 10 west of US 167 to LA 13, west of LA 13 south of LA 10 to Mamou and north of LA 104 west of Mamou;
 - vii. Franklin—That portion lying east of LA 17 and east of LA 15 from its juncture with LA 17 at Winnsboro;
 - viii. Iberville—West of LA 1. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries;
 - ix. Jefferson Davis—North of US 190 from junction with LA 26 to Kinder, west of US 165 and north of I-10 west from junction of US 165;
 - x. Madison—That portion lying east of US 65 from East Carroll Parish line to US 80 and south of US 80. Also, all lands east of the main channel of the Mississippi River;
 - xi. Morehouse—West of US 165 from the Arkansas line to the junction of LA 140 at Bonita, north and west of LA 140 to junction of LA 830-4 (Cooper Lake Road), west of LA 830-4 to US 165 at Bastrop, south of US 165 to junction of LA 3051 (Grabault Road) south of LA 3051 to junction of LA 138, west of LA 138 to junction of LA 134, north of LA 134 to the Ouachita Parish line;
 - xii. Ouachita—That portion west of the Ouachita River;
 - xiii. Pointe Coupee—All of the parish except that portion bounded on the north by LA Hwy. 1, from Innis to the junction of LA Hwy 417, on the west by LA Hwy. 417 southward toward McCrea, on the south by LA Hwy. 417 from McCrea to its junction with Delhi Lane, then by Delhi Lane to LA Hwy. 418, then LA Hwy. 418 northward to LA Hwy. 1 at Innis. EXCEPTION: see Sherburne WMA for special season dates on all state, federal and private lands within Sherburne boundaries.
 - xiv. Richland—That portion south of US 80 and east of LA 17;
 - xv. St. Landry—That portion bounded on the west by the West Atchafalaya Basin Protection Levee and on the east by the Atchafalaya River. EXCEPTION: the Indian Bayou Area, see Federal Lands Hunting Schedule for Indian Bayou Area dates;
 - xvi. Upper St. Martin—All within the Atchafalaya Basin. EXCEPTIONS: Sherburne WMA and Indian Bayou

Area, see WMA Turkey Hunting Schedule for special season dates on all state, federal and private lands within Sherburne WMA boundaries and see Federal Lands Hunting Schedule for Indian Bayou dates;

xvii. Tensas—That portion west of US 65 from the Concordia Parish line to its juncture with LA 128, north of LA 128 to St. Joseph; west and north of LA 605, 604 and 3078 northward to Port Gibson Ferry. Also all lands east of the main channel of the Mississippi River;

2. Area B

a. All of the following parishes are open:

- i. Caddo;
- ii. DeSoto;
- iii. Red River;
- iv. St. Tammany;
- v. Washington.

b. Portions of the following parishes are open:

- i. Ascension—All east of the Mississippi River;
- ii. Bossier—All open except that portion bounded on the north by I-20, on the west by LA 164, on the south by LA 164, and on the east by the Webster Parish Line;
- iii. East Carroll—East of US 65 from Arkansas state line to Madison Parish line;
- iv. Iberville—All east of the Mississippi River;
- v. Webster: All open except that portion bounded on the north by I-20, on the east by U.S. 371, on the south by LA 164, and on the west by the Bossier Parish line (Exception: See Federal Lands Hunting Schedule for Kisatchie National Forest dates);

3. Area C

a. All of the following parishes are open:

- i. Concordia;

b. Portions of the following parishes are open:

- i. Caldwell—All east of the Ouachita River;
- ii. Catahoula—All of the parish EXCEPT for that portion located in Area A;
- iii. Franklin—West of LA 17 from the Richland Parish line southward to Winnsboro, west of LA 15 southward to the Catahoula Parish line;
- iv. Richland—West of LA 17 from Franklin Parish line to Ringle Road, south of Ringle Road to Ferguson Road, south of Ferguson Road to Little Road, south of Little Road to Big Creek, east of Big Creek to Franklin Parish line;
- v. Tensas—East and south of US 65 from Concordia Parish line to LA 128, south of LA 128 to St. Joseph, east and south of LA 605, 604 and 3078 northward to Port Gibson Ferry.

4. Turkey season dates on Wildlife Management Areas, National Wildlife Refuges, Kisatchie National Forest and U.S. Army Corps of Engineers land located within Areas A, B, and C may vary from the season set for the parish in which they are located. Seasons for these lands are specified in LAC 76:XIX.115.

G. WMA Turkey Hunting Regulations

1. WMAs with youth turkey hunts are closed to all activities except turkey hunting by authorized youth hunt participants and fishing on the day(s) of the youth hunt.

2. Self-Clearing Permits: All turkey hunts, including lottery hunts, are self-clearing. Hunters must check in daily by obtaining a permit from a self-clearing station prior to hunting. The self-clearing permit must be in the hunter's possession while hunting. Upon completion of each days

hunt, the hunter must check out by completing and depositing the hunter report portion of the permit in the check-out box at a self-clearing station before exiting the WMA.

3. Lottery Hunts: All or portions of some WMA seasons are designated as lottery hunts and are restricted to hunters selected by pre-application lottery. To apply for these lottery hunts, a hunter must submit a completed official application form to the Baton Rouge office by the deadline printed on the application. A non-refundable fee of \$5 must be sent with each application. Applicants for WMA youth hunts must be 17 years of age or younger and at least 8 years old on the day of the hunt. Applicants may submit only one application and may be selected for only one WMA Turkey Lottery Hunt annually. Submitting more than one application will result in disqualification. Hunters must abide by self-clearing permit requirements. Hunters chosen for WMA lottery hunts may be accompanied by one person. The person accompanying a lottery hunter shall not possess a firearm/bow or take a turkey, and must remain within a distance that allows normal voice contact with the lottery hunter at all times. Youths chosen for special youth only hunts will be assigned a guide on the day of the hunt. One person may accompany the youth and guide, but may not hunt.

4. WMA Physically Challenged Hunt (Wheelchair Confined): Open only to hunters with a Physically Challenged Hunter Permit with wheelchair classification. During this hunt, ATVs may be used by hunters on all designated ATV trails in accordance with the Physically Challenged Hunter Permit. Hunters must abide by self-clearing permit requirements.

5. Rules Specific to Certain WMAs

a. Bens Creek—No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

b. Sandy Hollow—No turkey hunting within 100 yards of food plots identified by two yellow paint rings around the nearest tree.

c. Sherburne—All turkeys taken must be checked at the WMA headquarters.

d. Tunica Hills (North Tract)—Area closed to all users one day after close of turkey season until August 31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2263 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2375 (November 2002), LR 29:2512 (November 2003), LR 30:2874 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2469 (November 2007), LR 35:91 (January 2009), LR 35:2478 (November 2009).

Robert J. Baraham
Secretary

0911#059

RULE

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

Turkey Seasons (LAC 76:XIX.115)

The Wildlife and Fisheries Commission does hereby amend the turkey dates and limits for the 2010 season.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§115. Turkey Hunting Areas, Seasons, and Bag Limits

A. Daily limit is one gobbler. Season limit is two gobblers. Turkeys taken on WMAs are part of the season bag limit. Only one turkey may be taken during WMA lottery hunts.

B. Turkey season will open in designated areas on the Saturday nearest March 22. The Area A turkey season will be 30 consecutive days in length, the Area B turkey season will be 23 consecutive days in length, and the Area C turkey season will be 16 consecutive days in length. Wildlife Management Areas, National Forests, National Wildlife Refuges, and U.S. Army Corps of Engineers land may vary from this framework. Deviation from this framework may occur in those years when the Saturday nearest March 22 falls the day before Easter.

C. Statewide Youth Turkey and Physically Challenged Season on private lands shall be the weekend prior to the statewide turkey season.

D. Only those Wildlife Management Areas listed herein are open to turkey hunting. All other Wildlife Management Areas are closed.

E. 2010 Turkey Hunting Schedule

Area	Season Dates
A	March 20 - April 18
B	March 20 - April 11
C	March 20 - April 4
Private Lands Youth and Physically Challenged Hunter (Wheelchair Confined) Hunt	March 13-14

F. Wildlife Management Area Turkey Hunting Schedule

WMA	Non-Lottery Hunt Dates	Lottery Hunt Dates
Bayou Macon	None	April 10-11
Bens Creek	March 20-April 4	None
Big Lake	March 20-April 4	None
Bodcau	March 20-April 4	None
Boeuf	March 20-28	None
Clear Creek	March 29-April 18	March 20-21 March 27-28
Camp Beaugard	March 20-28	None
Dewey Wills		April 10-11 April 17-18
Fort Polk	March 20-April 18	None
Grassy Lake	March 20-28	None
Hutchinson Creek	March 20-April 18	None

WMA	Non-Lottery Hunt Dates	Lottery Hunt Dates
Jackson-Bienville	March 20-April 4	None
Lake Ramsey	March 20-April 4	None
Little River	March 20-April 4	None
Loggy Bayou	None	April 10-11
Peason Ridge	March 20-April 18	None
Red River	March 20-April 4	None
Sabine	None	March 20-21 March 27-28
Sandy Hollow	March 20-April 4	None
Sherburne	March 25-28	March 20-21 March 22-24
Sicily Island	None	March 20-22 March 23-25 March 26-28 March 29-April 4
Tangipahoa Parish School Board	March 20-April 18	None
Three Rivers	March 20-April 4	None
Tunica Hills South Tract	April 5-11	March 20-21 March 27-28 April 3-4
Tunica Hills North Tract	April 5-11	March 20-21 March 27-28 April 3-4
Union	None	April 10-11
Walnut Hills	March 20-April 18	None
West Bay	None	March 20-21 March 27-28

G. Wildlife Management Area Lottery Youth Hunts

WMA	Lottery Youth Hunt Date
Bens Creek	March 13
Big Lake	March 13
Clear Creek	March 13
Fort Polk/Peason Ridge/ Calcasieu Ranger Dist.	March 13
Grassy Lake	March 13
Jackson-Bienville	March 13
Loggy Bayou	April 3
Sherburne	March 13-14
Sicily Island	March 13

WMA	Lottery Youth Hunt Date
Spring Bayou	March 13
Thistlethwaite	April 3
Tunica Hills	March 13
Union	April 3
West Bay	March 13

H. Wildlife Management Area Physically Challenged (wheelchair confined) Hunt

1. Jackson-Bienville WMA will be open April 10-18 to holders of valid Physically Challenged Hunter (wheelchair classification) Permits.

I. Federal Lands Turkey Hunting Schedule

1. Kisatchie National Forest (KNF) turkey hunting schedule: Caney Ranger District, March 20-April 4; all remaining KNF lands, March 20-April 11 (including Catahoula and Red Dirt National Wildlife Management Preserves).

2. U.S. Army Corps of Engineers turkey hunting schedule: Indian Bayou Area, March 13-14 physically challenged lottery only hunt, lottery hunt only on March 20-21 and March 22-24, non-lottery hunt March 25-28. Old River Control and Lock Areas, March 20-April 4.

3. National Wildlife Refuges: Bogue Chitto NWR, March 20 - April 11; Lake Ophelia NWR, March 20 - April 4 hunt ends at 12:00 p.m. each day; Tensas NWR, March 13-14 (youth only), March 20-April 4; Upper Ouachita NWR, March 13 (youth lottery only).

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:2264 (November 1999), amended LR 26:2634 (November 2000), LR 27:2270 (December 2001), LR 28:2376 (November 2002), LR 29:2513 (November 2003), LR 30:2875 (December 2004), LR 31:3167 (December 2005), LR 32:2272 (December 2006), LR 33:2470 (November 2007), LR 35:90 (January 2009), LR 35:2481 (November 2009).

Robert J. Barham
Secretary

0911#058

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Agricultural Finance Authority

Farm and Agribusiness Recovery and Loan Program (LAC 7:III.101, 103, and 301-341)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:266, the Louisiana Agricultural Finance Authority (LAFA), is intending on adopting regulations to add needed definitions, update regulations regarding the administration of the LAFA and to establish the Farm and Agribusiness Recovery and Loan Program. Louisiana's agricultural producers and agribusinesses were severely damaged in 2008 by hurricanes Gustav and Ike. The federal government has appropriated \$44.7 million to assist the state's agricultural producers and agribusinesses in recovering from the effects of the two storms. The money is to be provided as an 80 percent loan and 20 percent grant to agricultural producers and 100 percent loans to agribusinesses. The LAFA is authorized to administer the disbursement of the loan and grant and subsequent collection of the loan and the use of the collection proceeds. The LAFA, by these regulations, is establishing the Farm and Agribusiness Recovery and Loan Program to disburse the money and administer the program.

Title 7

AGRICULTURE AND ANIMALS

Part III. Agricultural Finance

Chapter 1. General Provisions

§101. Definitions

A. The words and terms defined in R.S. 3:263 are applicable to this Part.

B. The following words and terms are defined for the purposes of this Part and are applicable to this Part.

Act—the Louisiana Agricultural Finance Act found in Chapter 3-B of Title 3 of the Louisiana Revised Statutes of 1950, (R.S. 3:261 et seq).

Agricultural—the adjective form of *agriculture* as defined in R.S. 3:263(6).

Farm—the total of all areas of land, water, or both in Louisiana, used by an agricultural producer to produce or harvest one or more agricultural products, regardless of whether the area or areas are located in more than one parish.

LAFA—the Louisiana Agricultural Finance Authority.

C. The following words and terms are defined for the purposes of the Louisiana Direct Placement Agricultural Revenue Bond Program (§§105-141) only.

Bond or *Bonds*—LAFA Direct Placement Agricultural Revenue Bonds which are exempt from federal taxation. Such bonds are issued from time to time throughout the year, and each issue will be identified by a letter designation, e.g.,

Series 1984-A, Series 1984-B, etc. The letter designation merely identifies the date of issue of each series of bonds. The proceeds of such bonds are used to purchase loans and pay the costs of issuance of the bonds.

Bond Resolution—the resolution adopted by LAFA to authorize the issuance of a bond to be sold to a lender.

Borrower—an individual, partnership, firm, corporation, company, cooperative, association, society, trust or any other business unit or entity, including any state or federal agency, which uses proceeds of a loan for any project which meets the requirements of these regulations.

Borrower's Certificate—the certified statement which each borrower must execute, prior to submission of the offer, setting forth the borrower's eligibility to participate in the program.

Closing—the date on which a loan is originated by a lender, which shall be mutually agreed upon between lender and borrower and sold to LAFA.

Code—the Federal Internal Revenue Code of 1954 as amended. In these regulations, the term Code may have specific reference to Section 103(b)(6) of the Internal Revenue Code and/or to regulations enacted by the Internal Revenue Service pursuant thereunder.

Default or *In Default*—with respect to any loan, any payment of principal or interest which is more than 30 days in arrears.

Farm—includes stock, dairy, poultry, fruit, fur-bearing animal and truck farms; plantations; ranches; nurseries; ranges; greenhouses or similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards.

Fee or *Fees*—any and all of the following:

a. *Application Fee*—a set fee based on the total value of the loan which is paid by the borrower and transmitted by the lender to LAFA for LAFA processing of the application for a loan.

b. *Commitment Fee*—a percentage of the total value of the loan which is paid by the borrower to the lender prior to submission of the offer to cover the costs of issuing the bond to support the loan granted to the borrower. This fee is refundable to the borrower under the conditions set forth in §121.B hereof.

c. *Cost of Issue Fee*—a percentage of the total value of the loan which is paid by the borrower to cover the costs of issuing the bond to support the loan granted to the borrower. The fee is paid in the form of a discount from the original principal amount of the loan when purchased by a LAFA from lender.

d. *Origination Fee*—a percentage of the total value of the loan which is paid by the borrower to the lender to cover the costs of processing, originating, and disbursing the proceeds of the loan granted to the borrower.

e. *Program Participation Fee*—a percentage of the remaining principal balance of the loan granted to borrower which is paid by the borrower to the lender on the due date

of the annual payment directed by trustee. The lender transmits to the trustee along with the loan payment, and the proceeds thereof are used to cover the administrative costs of trustee and LAFA.

First-Time Farmer—an individual who has never had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated. Ownership or participation by a spouse or child is treated as ownership or participation by the individual. Substantial farmland means any parcel of land unless:

a. such parcel is smaller than 15 percent of the median farm size in the parish in which such parcel is located; and

b. the fair market value of the land does not at any time while held by the individual exceed \$125,000.

Intent Resolution—the resolution adopted by LAFA stating its intent to accept the offer and to issue a bond, the proceeds of which will be used to purchase an agricultural loan originated by the lender and accepting the offer.

Interest Rate—one of the following when applied to a loan.

a. *Fixed Interest Rate*—a rate of interest which does not change throughout the term of the loan.

b. *Variable Interest Rate*—a rate of interest which may change from time to time at stated intervals throughout the term of the loan.

c. *Prime Interest Rate*—the base rate on corporate loans at large U.S. money center commercial banks as published in The Wall Street Journal as the prime rate. When the prime rate is published in The Wall Street Journal as a range in the form of a low and high rate, then in that event, LAFA may designate a rate within the published range which shall be the prime interest rate. When LAFA does not designate a rate within the published range the prime interest rate shall be the high of the range.

IRS—the Internal Revenue Service of the United States.

LAFA—the Louisiana Agricultural Finance Authority, an agency of state government under the jurisdiction of the Department of Agriculture and Forestry, and any of its duly authorized agents; the term also means the issuer of Direct Placement Agricultural Revenue Bonds.

Lender—any of the following, when participating in the program: a bank, bank or trust company, federal land bank, production credit association, bank for cooperatives, building and loan association, homestead, insurance company, investing banker, mortgage banker or company, pension or retirement fund, savings bank or savings and loan association, small business investment company, credit union, any other financial institution authorized to do business in Louisiana or operating under the supervision of any federal agency or any Edge Act Corporation or agreement, or a corporation organized or operating pursuant to Section 25 of the Federal Reserve Act.

Loan or Loans—an interest-bearing agricultural loan, described by an offer, originated by a lender participating in the LAFA Program to an eligible borrower, and evidenced by a loan note.

Loan File—the loan documents pertaining to a particular loan, which consist of the following, all in the form provided by LAFA:

a. loan purchase agreement;

b. loan submission voucher;

c. opinion of lender's counsel;

d. officer's closing certificate;

e. loan note;

f. mortgage or any other evidence of security securing the borrower's obligations under the loan note;

g. certificate of economic life; and

h. assignment of loan note.

Loan Note—a promissory note or other evidence of indebtedness executed by a borrower to evidence the borrower's obligation to repay the loan.

Loan Purchase Agreement—an agreement between LAFA and a lender under which, among other required provisions, LAFA agrees to purchase a loan after it is originated by the lender and the lender agrees to repurchase the loan in the event of default by the borrower.

Loan Submission Voucher—a document provided by LAFA and submitted by the lender to the trustee requesting the purchase of the loan by LAFA at a price equal to a specified percentage of the principal amount of the loan and which also contains substantially the same terms and conditions set forth in the loan terms schedule contained in the offer.

Loan Terms Schedule—a loan description form, to be attached to the offer, which describes the terms and conditions of the proposed loan and the project to be financed with loan proceeds.

Offer—the written document entitled Offer to Originate and Sell Agricultural Loans executed by a lender setting forth the terms and conditions whereby the lender agrees to originate and sell a loan to LAFA and to purchase a bond in the same principal amount as the loan.

Origination Period—a six-month period beginning with the date of issuance of a bond by LAFA.

Principal User—a person or company who uses more than 10 percent of a project, measured by the value paid by such user for the project. All capital expenditures for the project, must be taken into account to determine which are principal users of the project. For example, A, B, and C own Farm X in Parish X, each owning individually and not as a partner, respectively, 55 percent, 40 percent, and 5 percent by value, of the farm. A and B are principal users of Farm X (i.e., each owns more than 10 percent, by value), but C is not a principal user of Farm X because C only owns 5 percent by value. If A or B seek to acquire another Farm Y in Parish X, to be financed by a bond, the capital expenditures of A or B on Farm X will be deducted from the maximum principal amount of the bond (either \$1,000,000 or \$10,000,000; see §111). Since C is not a principal user of Farm X, if he acquired Farm Y with bond financing, he would not be required to deduct his capital expenditures on Farm X from the loan proceeds for the purchase of Farm Y.

Program—the Direct Placement Agricultural Revenue Bond Program administered by LAFA.

Project—the property to be financed with loan proceeds, pursuant to the terms and conditions contained in the offer and in the loan purchase agreement.

Rehabilitation Expenditures—any costs associated with renovation or modernization of an existing building or the equipment located within an existing building which can be properly charged to a capital account; the term does not include expenditures for enlargement of an existing building.

Related Person—

a. the following are related persons if borrower is an individual:

- i. borrower's spouse or a spouse's ancestors or lineal descendants;
- ii. borrower's siblings (i.e., brothers and sisters);
- iii. borrower's ancestors and/or lineal descendants;
- iv. a corporation in which more than 50 percent in value of the outstanding stock is owned, directly or indirectly, by or for borrower;
- v. a trust of which borrower is the grantor or the beneficiary; and
- vi. a partnership of which borrower owns, directly or indirectly, more than 50 percent of the capital or profits interest;

b. the following are related persons if borrower is a corporation:

- i. an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation;
- ii. a trust which owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation;
- iii. a corporation that is a member of the same parent-subsidiary controlled group, a brother-sister controlled group, or a combined group of corporations;
- iv. a partnership which owns, directly or indirectly, more than 50 percent of the outstanding stock of the corporation; and
- v. for purposes of these regulations, stock owned, directly or indirectly, by or for a corporation, partnership, estate or trust is considered to be owned proportionately by or for its shareholders, partners or beneficiaries. In addition, an individual is considered to be the owner of stock owned, directly or indirectly, by or for his family;

c. the following are related persons if borrower is a partnership:

- i. a partner who owns, directly or indirectly, more than 50 percent of the capital or profits interest of the partnership;
- ii. another partnership in which the same persons own, directly or indirectly, more than 50 percent of the capital or profits interest;
- iii. if an individual owns stock in a corporation, other than constructively through his family, he is considered as owning the stock owned, directly or indirectly, by or for his partner; and
- iv. a partner is considered as the owner of partnership interests:

(a). owned by a corporation, partnership, estate or trust, proportionately, if he is a shareholder, partner, or beneficiary; and

(b). owned by his brothers, sisters, spouse, ancestors or lineal descendants;

d. the following are related persons if borrower is a trust:

- i. its grantor;
- ii. another trust, if the same person is the grantor of both trusts;
- iii. a beneficiary of the trust;
- iv. a beneficiary of another trust, if the same person is the grantor of both trusts; and
- v. a corporation of which more than 50 percent in value of the outstanding stock is owned, directly or indirectly, by or for the trust or by or for a grantor of the trust.

TEFRA—the Tax Equity and Fiscal Responsibility Act of 1982 (Federal).

Trustee—Capital Bank and Trust Company of Baton Rouge, Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Finance Authority, LR 10:866 (November 1984); amended LR 36:

§103. Administration of LAFA's Affairs

A. LAFA officers shall be a chairman, vice-chairman, and secretary who shall serve terms of one year but may be elected for an indefinite number of terms.

B. After the initial election of officers, the officers shall be elected at LAFA's regular meeting during the first quarter of the year.

C. In the absence of the chairman at any LAFA meeting, the vice-chairman shall preside.

D. LAFA shall hold at least one meeting during each quarter of the year but may meet more frequently upon the call of the chairman.

E. LAFA meetings shall normally be held at its domicile but may be held at other locations upon the determination of the chairman or the will of the members.

F. There shall be no voting by proxy.

G. The chairman shall designate a hearing officer, who may or may not be a LAFA member, to preside at all adjudicatory proceedings. The chairman may, if he so desires, serve as hearing officer at any such proceeding. All adjudicatory proceedings held by LAFA shall be conducted in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Agricultural Finance Authority, LR 10:867 (November 1984), amended LR 36:

Chapter 3. Farm and Agribusiness Recovery and Loan Program

§301. Farm and Agribusiness Recovery and Loan Program; Establishment of; Purpose; Limitations; Terms

A. The Farm and Agribusiness Recovery and Loan Program is hereby established.

B. The Farm and Agribusiness Recovery and Loan Program provides loans, grants, or a combination thereof to agricultural producers or agribusinesses for the purpose of

aiding in the recovery from the 2008 hurricanes, Gustav and Ike, and to subsequently provide Louisiana agricultural producers and agribusinesses additional financial resources for recovery from any future disasters and for the maintenance and growth of agriculture in Louisiana.

C. The limits on loans and grants from the Farm and Agribusiness Recovery and Loan Program are as follows:

1. Agricultural producers may receive a minimum of \$10,000 and up to a maximum of \$100,000. The amount provided shall be a combination of an 80 percent loan and 20 percent grant.

2. Agribusinesses may receive a minimum of \$10,000 and up to a maximum of \$250,000 in the form of a direct loan.

D. The general terms under which disbursements will be made are as follows:

1. Interest at the rate of 1 ½ percent interest per annum will be charged on the unpaid balance of all loans made under this program.

2. The maximum term of any loan shall be 10 years.

3. Any grant given in combination with a loan shall be subject to being repaid if the loan plus interest is not paid in full or if the loan goes into default.

4. Normal and customary terms of loans regarding notices, defaults, late fees, attorney fees, and other matters customarily spelled out in a promissory note or other negotiable instrument. Such terms, as authorized by LAFA, shall be in the negotiable instrument approved by LAFA.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural Finance Authority, LR 36:

§303. Eligibility of Applicant

A. An agricultural producer experiencing a 2008 storm related loss shall be eligible to receive money from the Farm and Agribusiness Recovery and Loan Program upon meeting the following requirements.

1. The farm upon which a loss occurred must be located in Louisiana.

2. Active agricultural operations must have been ongoing before the 2008 storms occurred and continue to be ongoing thereafter.

3. A minimum annual gross revenue of \$25,000 from the agricultural operations must have been received in 2007 or in 2008 prior to the storms.

4. Suffered a minimum storm related loss of \$10,000.

5. Employed one or more person (including owner) full time during the previous year.

B. An agribusiness experiencing a 2008 storm related loss shall be eligible to receive money from the Louisiana Farm and Agribusiness Recovery and Loan Program upon meeting the following requirements.

1. The agribusiness must be physically located in Louisiana.

2. Active agribusiness operations must have been ongoing before the 2008 storms occurred and continue to be ongoing from the time active agribusiness operations could resume after the storms up to the date of application.

3. A minimum annual gross revenue of \$25,000 from the agribusiness operations must have been received in 2007 or in 2008 prior to the storms.

4. Employed at least 2 full time employees (including owner) in 2008, prior to the storms and support at least two other indirect jobs in this state.

5. Experienced a 20 percent decline in gross agribusiness revenue for the period of time in 2008 after the storms occurred as compared to gross agribusiness revenue for the same time period in 2007 or experienced a combined tangible property loss and revenue loss of \$10,000 or more.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural Finance Authority, LR 36:

§305. Application Procedure and Forms

A. The application period shall be publicly announced or published in a manner that will fairly put agricultural producers and agribusinesses on notice of the Farm and Agribusiness Recovery and Loan Program and the start and end of the application period.

B. Only application forms prepared by LAFA for this purpose may be used.

C. Every applicant for a loan or grant shall submit the following documents to LAFA:

1. the completed application form signed by the agricultural producer or agribusiness, if a sole proprietorship. If the agricultural producer or agribusiness is not a sole proprietorship then the application form must be signed by all owners or by a duly authorized representative. The authorization of a representative to sign on behalf of an agricultural producer or agribusiness must be shown by a power of attorney, corporate resolution or other expression of authority that is consistent with the legal form of the agricultural producer or agribusiness;

2. proof of identity of the signer of the application. One or more of the following may be used as proof of identity:

a. birth certificate;

b. government issued photo identification or other documentation acceptable to the agricultural loan committee;

3. proof of address of the farm or agribusiness. One or more of the following may be used as proof of address: copy of utility bill, Louisiana tax return from the previous year, lease agreement, business license, USDA Farm Service Administration (FSA) certification, or other documentation acceptable to the agricultural loan committee.

4. Proof of Ownership of the Farm or Agribusiness. One or more of the following may be used as proof of ownership: tax returns with appropriate schedules, stock certificates with proof of total number of shares, or other documentation acceptable to the agricultural loan committee.

5. Proof of Employees. One or more of the following may be used as proof of employees: Federal form 941, Louisiana unemployment tax records, internal payroll register, or other documentation acceptable to the agricultural loan committee.

6. Proof of Revenue. One or more of the following may be used as proof of gross revenues: Federal tax returns with appropriate schedules, actual revenue receipts, or other documentation acceptable to the agricultural loan committee.

7. The agricultural loan committee may require an applicant to supply; tax returns with appropriate schedules, insurance claim forms, settlement sheets, FSA declarations, receipts for replacement, or other documentation when such documentation is needed by the agricultural loan committee in deciding whether to approve or deny an application.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural Finance Authority, LR 36:

§307. Approval of Application

A. The applicant must provide all required information at least 10 working days prior to the meeting of the agricultural loan committee where the application will be considered, unless partial submission is allowed by LAFA's staff or the agricultural loan committee.

B. The agricultural loan committee may require terms and conditions that are not included in other loan/grants to be in a particular loan/grant based on the circumstances of each individual loan/grant so long as such terms and conditions are consistent with these regulations.

C. The agricultural loan committee may authorize LAFA's director to negotiate additional terms and conditions for a specific loan/grant within the parameters established by these regulations and the instructions of the agricultural loan committee.

D. The agricultural loan committee shall review each loan application and approve or deny the application, after consideration of the application, supporting documentation, comments of the applicant, and staff recommendations. However, the agricultural loan committee may defer action on an application to obtain additional information.

E. Within three business days after an application has been acted upon by the agricultural loan committee notice of the decision shall be sent to the applicant. Notification may be by U.S. mail, private commercial courier, hand delivery by an employee of the department, fax, e-mail, or other electronic means. However, whatever the means of notification used must be designed to verify receipt of the notification by the applicant.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural Finance Authority, LR 36:

§309. Agricultural Loan Committee; Establishment of; Purpose; Membership; Quorum

A. The agricultural loan committee is hereby established to consider and act on applications for loans or grants, or a combination of both made pursuant to this Part.

B. The agricultural loan committee shall consist of the following seven members.

1. the Commissioner of Agriculture and Forestry or his designee;

2. the Chancellor of the LSU AgCenter or his designee;

3. the Chancellor of the Southern University AgCenter or his designee;

4. the President of the Louisiana Farm Bureau Federation or his designee;

5. the Assistant Commissioner of Agriculture and Forestry, Office of Management and Finance or his designee;

6. one member at large appointed by the Commissioner of Agriculture and Forestry;

7. the Director of LAFA or his designee.

C. Four members of the agriculture loan committee shall constitute a quorum.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural Finance Authority, LR 36:

§311. Disbursement of Funds

A. After the agricultural loan committee has approved an application the proceeds of the loan/grant shall be disbursed by LAFA's staff upon the signing of the loan or grant documents by the applicant and LAFA's director.

B. If the total amount of proceeds to be disbursed under the Louisiana Farm and Agribusiness Recovery and Loan Program exceeds the amount of money available for the program then the amount received by each approved applicant shall be reduced on a pro-rata basis.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural Finance Authority, LR 36:

§313. Use of Loan and Grant Proceeds

A. Loan and grant proceeds may be used to:

1. pay current year expenses that are related to the preparation, planting, management and harvesting the current year crop as specified;

2. pay down or pay off existing crop production loans, if a financial institution has committed itself to furnish sufficient funding for preparing, planting, managing and harvesting the current year crop;

3. pay operating expenses (rent, insurance, utilities, etc.);

4. purchase inventory;

5. pay or refinance more expensive business-related debt to improve cash flow.

B. Loan and grant proceeds may not be used for:

1. acquisition of buildings or land;

2. new construction or reconstruction;

3. refinancing of State Bridge Loans or Community Development Block Grant loans;

4. payments of tax arrearages, government fines or penalties;

5. political or religious activities;

6. buying out any stockholder or equity holder in a business;

7. buying out or reimbursing any family member;

8. investing in instruments or investments for the sole purpose of a return on Investment; or

9. a loss or expense for which insurance benefits has been or is to be paid or for which financial assistance has been or is to be provided from any other source, whether public or private.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural Finance Authority, LR 36:

§315. Delinquencies and Defaults

A. A loan shall become delinquent if the full monthly or periodic payment is not received within 10 calendar days following the due date or the loan is otherwise in default for non-compliance with any other provision of the loan.

1. Written notification of a delinquency shall be sent to the borrower giving the borrower the opportunity to cure the cause for the delinquency within 30 days from the date of the notice plus payment of any late fee .

2. If the delinquency is due to late payment, the director of LAFA, when he determines that such payment arrangements are justified by the circumstances, may make payment arrangements with the borrower to cure the delinquency before reporting the loan to the LAFA Board as a delinquent loan.

3. If the delinquency is not timely cured, the delinquent loan shall be reported to the LAFA Board, which may review and take action on the delinquent loan at any meeting of the board.

B. Upon review, the LAFA Board may direct that the loan be maintained in delinquent status and set the terms and time by which the borrower may bring the payments up to date or otherwise cure the delinquency or the board may declare the loan to be in default and that the entire amount due on the loan accelerated in accordance with the terms of the loan.

1. If a loan is continued as delinquent the LAFA Board shall establish the terms and time by which the borrower may bring the loan out of delinquency and into good standing and the borrower shall be notified of such terms and time.

2. If a loan is declared to be in default, notice of the default and a demand for full payment of all sums due, including the amount of any portion of the loan that may be forgiven as a grant, shall be sent to the borrower along with a request for full payment within 10 business days from the sending of the notice.

C. If a loan is continued as delinquent and the borrower does not accept the terms and time set by the board or if the borrower does not timely comply with the terms, the loan shall automatically go into default without further action of the board. Upon default, a demand for payment shall be made and if payment is not timely made the loan shall be turned over for collection, as provided for in these regulations.

D. If full payment is not received by the deadline given in the notice of default the loan, including the amount of any portion of the loan that may be forgiven as a grant, shall be turned over to an attorney for collection in accordance with the terms of the loan.

E. Any notice required by these regulations or by the terms of any loan may be sent by certified United States mail, return receipt requested; by any commercial courier who requires a receipt of delivery; or by hand delivery.

AUTHORITY NOTE: Promulgated in accordance with R. S. 3:266.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural Finance Authority, LR 36:

Family Impact Statement

The impact of the proposed action regarding the rules and regulations set out in the Notice of Intent on family formation, stability, and autonomy has been considered. It is estimated that the proposed action will have no significant effect on the (1) stability of the family, (2) authority and rights of parents regarding the education and supervision of their children, (3) functioning of the family, (4) family earnings and family budget, (5) behavior and personal responsibility of children, or (6) ability of the family or a local government to perform the function as contained in the proposed rule.

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, data, opinions, and arguments, whether for, against, or regarding these proposed regulations. Written submissions are to be directed to Renee Simon, LAFA Director, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4:00 p.m. on the 30th day of December 2009. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Farm and Agribusiness Recovery and Loan Program

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

It is anticipated that the implementation cost to state government for the Farm and Agri-business Recovery and Loan Program will be \$44.8 million over the next five fiscal years. The source of funding is federal Community Development Block Grant funds appropriated to the Division of Administration pursuant to Act 10 of the 2009 Regular Session of the Legislature. The program will be administered by the Louisiana Agricultural Finance Authority, pursuant to Act 510 of 2009, through an interagency agreement with the Office of Community Development. The use of funds was approved by the Louisiana Recovery Authority through an action plan amendment for anticipated expenditures as follows: farm recovery loan and grants, \$32.4 million; agri-business recovery loan assistance, \$10 million; and administration cost, \$2.4 million. It is anticipated that there will be no implementation costs or savings to local governmental units. The program is currently operating under Emergency Rule.

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

To the extent that agricultural economies are sustained as a result of this loan program, the implementation of this proposed action is anticipated to have a positive, but indeterminable impact on the revenue collections of both state and local governmental units.

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

There is an anticipated economic benefit to agricultural producers, agri-businesses and related industries as a result of the implementation of this proposed action. The proposed agricultural disaster recovery loan and grant program is anticipated to benefit eligible applicants and supported industries. The proposed rules provide that agricultural producers may receive a minimum of \$10,000 to a maximum of \$100,000 and agri-businesses may receive a minimum of \$10,000 up to a maximum of \$250,000 in assistance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is anticipated to have a positive, but indeterminable impact on competition and employment. Impacted industries include, but are not limited to, agricultural

producers and agri-business that may be sustained due to the implementation of this action.

Craig Gannuch
Assistant Commissioner
0911#101

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Civil Service
Board of Ethics**

Financial Disclosure Forms (LAC 52:I.Chapter 13)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to make amendments to the Rules for the Board of Ethics to bring the rules into compliance with current statutory provisions and Act 1 of the 2008 1st Special Legislative Session and Act 472 of the 2008 Regular Legislative Session.

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Title 52
ETHICS
Part I. Board of Ethics

Chapter 13. Records and Reports

§1318. Statements Filed Pursuant to Section 1124 of the Code of Governmental Ethics

PERSONAL FINANCIAL DISCLOSURE
"TIER 1"
LSA-R.S. 42:1124

USE THIS FORM ONLY IF YOU ARE A CANDIDATE:

This form applies only to:

- (1) Candidates for Statewide elected officials
-

- (1) **Candidates must file the statement within 10 days of filing a notice of candidacy for one of the above offices.**

- (2) **If you hold more than one office that requires the filing of a financial disclosure statement, please note that only one financial disclosure report shall be filed by the filer. Such report shall be filed under the highest Tier (with Tier 1 being the highest, then Tier 2, then Tier 2.1 and Tier 3 being the lowest).**
-

INSTRUCTIONS

Use as many pages of each section of the form as are required. Machine copies of the form's pages may be used. Additional copies of the forms or individual schedules may be obtained on the Louisiana Board of Ethics website at www.ethics.state.la.us. In addition, information sheets and Frequently Asked Questions (FAQs) are available on the Louisiana Board of Ethics website.

Please file the completed form with the Louisiana Board of Ethics by mail or facsimile at:

P.O. Box 4368 or (225) 381-7271
Baton Rouge, LA 70821

The report shall reflect income, amounts, and values for the activities with respect to employment, transactions, liabilities, etc. for the prior calendar year. For example, if the report is due on May 15, 2009, the information provided should be for the 2008 calendar year.

NOTE: Where amounts are required herein, indicate such amounts by using one of the following categories, categories, unless otherwise indicated on the schedule:

I	Less than \$5,000	IV	\$50,000 to \$99,999
II	\$5,000 to \$24,999	V	\$100,000 to \$199,999
III	\$25,000 to \$49,999	VI	\$200,000 or more

Instructions (continued):

For the purposes of this form, the following definitions apply:

- **“Business”** means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.
- **“Income”** for a business means gross income less (i) costs of goods sold, and (ii) operating expenses.
- **“Income”** for an individual means taxable income and shall not include any income received pursuant to a life insurance policy.
- **“Public office”** means any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the president or vice president of the United States, presidential elector, delegate to the political party convention, US Senator, US congressman, or political party office.
- **“Political Subdivision”** means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Examples are: Hospital Service Districts, School Boards and the schools under its authority, Police Jurys, Parish Councils, Board of Aldermen, Cities, Towns, Villages, etc.
- **LSA-R.S. 18:1505.2(L)(3)(a)** refers to (i) any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law; (ii) any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted, and (iii) any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act, and any person who owns a casino where such gaming operations are licensed.
- **“Consumer credit transaction”** means a consumer loan or a consumer credit sale but does not include a motor vehicle credit transaction made pursuant to R.S. 6:969.1 et seq. R.S. 9:3516(13).

PERSONAL FINANCIAL DISCLOSURE
"TIER 1"
LSA-R.S. 42:1124

ORIGINAL REPORT

AMENDED REPORT This Report Covers Calendar Year 20____

I hold an office that would require a filing under Tier 2, Tier 2.1 or Tier 3. If this box is checked, filer must complete Schedule K.

Full Name of Filer: _____

Mailing Address: _____
Street Apt. #

City State Zip Code

Office Held or Position Sought _____

Date of Election _____ Date of Qualifying _____

Full Name of Spouse: _____

Spouse's Occupation: _____

Spouse's Principal Business Address, if any:

Street Suite #

City State Zip Code

- (A) I certify that I have filed my federal income tax return for the previous year.
 (B) I certify that I have filed my state income tax return for the previous year.
or
 (A) I certify that I have filed for an extension of my federal income tax return for the previous year.
 (B) I certify that I have filed for an extension of my state income tax return for the previous year.
or
 I certify that I have not filed my federal or state income tax return for the previous year as the returns are not due as of the date of qualifying.

CERTIFICATION OF ACCURACY

**I do hereby certify, after having been first
duly sworn, that the information contained**

**in this personal financial disclosure form is
true and correct to the best of my knowledge,
information and belief.**

Signature of Filer

Sworn to and subscribed before me
this ____ day of _____,
20__.

Notary Public
Printed Name: _____
ID# _____ Commission Expires _____

Page 1 of ____

SCHEDULE A
EMPLOYMENT INFORMATION

Please disclose the name of the employer, job title, a brief description of the job description for each full-time or part-time employment position held by the individual or spouse.

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

SCHEDULE B
POSITIONS - BUSINESS

The name, address, brief description, nature of association, and the amount of interest in each business in which you or your spouse is a director, officer, owner, partner, member, or trustee, AND in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business.

Note: For this page ONLY, the "amount of interest" must be reported as a percentage figure.

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

SCHEDULE C
POSITIONS - NONPROFIT

The name, address, brief description of, and nature of association with a nonprofit organization in which you or your spouse is a director or officer.

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Organization Description _____

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Organization Description _____

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Organization Description _____

SCHEDULE D
INCOME FROM THE STATE, POLITICAL SUBDIVISIONS,
AND/OR GAMING INTERESTS

The name, address, type, and amount of each source of income received by you or your spouse, **or** by any business in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business, which is received from any of the following:

- the state or any political subdivision (see instructions for examples) as defined in Article VI of the Constitution of Louisiana;
- services performed for or in connection with a gaming interest as defined in R.S. 18:1505.2L(3)(a).

Note: For this page ONLY, the "amount of income" must be reported as an exact dollar figure.

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address

_____ Street Suite #

_____ City State Zip Code

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address

_____ Street Suite #

_____ City State Zip Code

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address

_____ Street Suite #

_____ City State Zip Code

SCHEDULE E
INCOME

The name, address, type, nature of services rendered, and amount of each source of income in excess of \$1,000 received by you or your spouse.

NOTE: If the income is derived from professional or consulting services and the disclosure of the name or address of the source of income is prohibited by law or by professional code, such income should be disclosed on Schedule F.

DO NOT include income derived from child support and alimony payments contained in a court order OR from disability payments from any source. **INCOME SHALL BE REPORTED BY CATEGORY.**

DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULE D.

Filer Spouse Amount of Income: I II III IV V VI

Name of Source of Income _____ Type: _____

Address _____

Street Suite #

City State Zip Code

Nature of Services Rendered _____

Filer Spouse Amount of Income: I II III IV V VI

Name of Source of Income _____ Type: _____

Address _____

Street Suite #

City State Zip Code

Nature of Services Rendered _____

Filer Spouse Amount of Income: I II III IV V VI

Name of Source of Income _____ Type: _____

Address _____

Street Suite #

City State Zip Code

Nature of Services Rendered _____

Filer Spouse Amount of Income: I II III IV V VI

Name of Source of Income _____ Type: _____

Address _____

Street Suite #

City State Zip Code

Nature of Services Rendered _____

SCHEDULE F
INCOME FROM CERTAIN PROFESSIONAL OR CONSULTING SERVICES

Check if no income was received from professional or consulting services for which the disclosure of the name or address of the source of income is prohibited by law or by professional code.

For income derived from professional or consulting services, including mental health, medical health, or legal services, when the disclosure of the name or address of the source of income is prohibited by law or by professional code, report the number of clients and amount of income for the applicable industry types below.

INCOME SHALL BE REPORTED BY CATEGORY.

Industry Type	# of Clients	Amount	Individual, Spouse or Both
D-1 UTILITIES			
Electric		I II III IV V VI	
Gas		I II III IV V VI	
Telephone		I II III IV V VI	
Water		I II III IV V VI	
Cable television companies		I II III IV V VI	
D-2 TRANSPORTATION			
Intrastate companies		I II III IV V VI	
Pipeline companies		I II III IV V VI	
Oil and gas exploration		I II III IV V VI	
Oil and gas production		I II III IV V VI	
Oil and gas retailers		I II III IV V VI	
D-3 FINANCE AND INSURANCE			
Banks		I II III IV V VI	
Savings and loan associations		I II III IV V VI	
Loan and/or finance companies		I II III IV V VI	
Manufacturing firms		I II III IV V VI	
Mining companies		I II III IV V VI	
Life insurance companies		I II III IV V VI	
Casualty insurance companies		I II III IV V VI	
Other insurance companies		I II III IV V VI	
D-4 RETAIL COMPANIES			
Beer companies		I II III IV V VI	
Wine companies		I II III IV V VI	
Liquor companies		I II III IV V VI	
Beverage distributors		I II III IV V VI	
Industry Type	# of Clients	Amount	Individual, Spouse or Both
D-5 ASSOCIATIONS			
Trade		I II III IV V VI	
Professional		I II III IV V VI	
D-6 OTHER (SPECIFY)			

**SCHEDULE G
IMMOVABLE PROPERTY**

A brief description, fair market value or use value (in value ranges by category) as determined by the assessor for purposes of ad valorem taxes, and the address (if no address, then provide the location by state and parish or county), of each parcel of immovable property in which you or your spouse, either individually or collectively, has an interest provided that the fair market value or use value as determined by the assessor exceeds \$2,000. **VALUE SHALL BE REPORTED BY CATEGORY.**

Filer Spouse Both

Value of Property: I II III IV V VI

Address _____
 Street Suite #

 City State Zip Code

Property Description _____

Filer Spouse Both

Value of Property: I II III IV V VI

Address _____
 Street Suite #

 City State Zip Code

Property Description _____

Filer Spouse Both

Value of Property: I II III IV V VI

Address _____
 Street Suite #

 City State Zip Code

Property Description _____

Filer Spouse Both

Value of Property: I II III IV V VI

Address _____
 Street Suite #

 City State Zip Code

Property Description _____

SCHEDULE H
INVESTMENT HOLDINGS

The name, a brief description, and amount (**in value ranges by category**) of each investment security having a value exceeding \$1,000 held by you or your spouse, excluding variable annuities, variable life insurance, variable universal life insurance, whole life insurance, any other life insurance product, mutual funds, education investment accounts, retirement investment accounts, government bonds, and cash or cash equivalent investments. (NOTE: Exclude any information concerning any property held and administered for any person other than you or your spouse under a trust, tutorship, curatorship, or other custodial instrument.)

Individual, Spouse, or Both	Name of Security	Description	Amount(categories)
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI

**SCHEDULE I
TRANSACTIONS**

A brief description, amount (**in value ranges by category**), and date of any purchase or sale, in excess of \$1,000, of any immovable property AND of any personally owned tax credit certificates, stocks, bonds, or commodities futures, including any option to acquire or dispose of any immovable property or of any personally owned tax credit certificates, stocks, bonds, or commodities futures. (NOTE: Exclude variable annuities, variable life insurance, variable universal life insurance.)

Individual, Spouse, or Both	Transaction Date	Description of Transaction	Amount(categories)
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI

SCHEDULE J
LIABILITIES

The name and address of each creditor, amount, and name of each guarantor, if any, to whom you or your spouse owes any liability which exceeds \$10,000. **AMOUNT SHALL BE REPORTED BY CATEGORY.**

NOTE: Exclude the following:

- any loan secured by movable property, if such loan does not exceed the purchase price of the movable property which secures it;
- any liability, secured or unsecured, which is guaranteed by you or your spouse for a business in which you or your spouse owns any interest, provided that the liability is in the name of the business and, if the liability is a loan, that you or your spouse does not use proceeds from the loan for personal use unrelated to business;
- any loan from an immediate family member, unless such family member is a registered lobbyist, or his principal or employer is a registered lobbyist, or he employs or is a principal of a registered lobbyist, or unless such family member has a contract with the state.

Filer Spouse Nature of Liability _____

Name of Creditor _____ Amount: I II III IV V VI

Address _____

Street

Suite #

City

State

Zip Code

Name of Guarantor (if any) _____

Filer Spouse Nature of Liability _____

Name of Creditor _____ Amount: I II III IV V VI

Address _____

Street

Suite #

City

State

Zip Code

Name of Guarantor (if any) _____

Filer Spouse Nature of Liability _____

Name of Creditor _____ Amount: I II III IV V VI

Address _____

Street

Suite #

City

State

Zip Code

Name of Guarantor (if any) _____

SCHEDULE K
OTHER OFFICES/POSITIONS

Please set forth below any and all other office/positions held which would require a filing under Section 1124.2 (Tier 2), Section 1124.2.1 (Tier 2.1) or Section 1124.3 (Tier 3) of the Code of Governmental Ethics. Please note that only one financial disclosure report shall be filed by the filer and such report shall be filed under the highest Tier (with Tier 1 being the highest, then Tier 2, then Tier 2.1 and Tier 3 being the lowest).

NAME OF POSITION OR OFFICE HELD:

PERSONAL FINANCIAL DISCLOSURE
“TIER 1”
LSA-R.S. 42:1124

This form applies only to:

- (1) Statewide elected officials
- (2) Secretaries in executive branch agencies
 - Department of Economic Development
 - Department of Culture, Recreation, and Tourism
 - Department of Environmental Quality
 - Department of Health and Hospitals
 - Department of Labor
 - Department of Natural Resources
 - Department of Public Safety and Corrections
 - Department of Revenue
 - Department of Social Services
 - Department of Transportation and Development
 - Department of Wildlife and Fisheries
 - Department of Veterans Affairs
- (3) Executive secretary of the Public Service Commission
- (4) Director of state civil service
- (5) The Superintendent of Education
- (6) The Commissioner of Higher Education
- (7) The president of each public post-secondary education system
- (8) The Commissioner of the Division of Administration
- (9) Senior staff in the governor's office: the chief of staff, the policy director, the deputy chief of staff, the executive counsel, and the legislative director

1. Due annually by May 15th. The statute provides NO exceptions to this filing date.

2. If you hold more than one office that requires the filing of a financial disclosure statement, please note that only one financial disclosure report shall be filed by the filer. Such report shall be filed under the highest Tier (with Tier 1 being the highest, then Tier 2, then Tier 2.1 and Tier 3 being the lowest).

INSTRUCTIONS

Use as many pages of each section of the form as are required. Machine copies of the form's pages may be used. Additional copies of the forms or individual schedules may be obtained on the Louisiana Board of Ethics website at www.ethics.state.la.us. In addition, information sheets and Frequently Asked Questions (FAQs) are available on the Louisiana Board of Ethics website.

Instructions (continued):

Please file the completed form with the Louisiana Board of Ethics by mail or facsimile at:

P.O. Box 4368 or (225) 381-7271
Baton Rouge, LA 70821

The report shall reflect income, amounts, and values for the activities with respect to employment, transactions, liabilities, etc. for the prior calendar year. For example, if the report is due on May 15, 2009, the information provided should be for the 2008 calendar year.

NOTE: Where amounts are required herein, indicate such amounts by using one of the following categories, categories, unless otherwise indicated on the schedule:

I	Less than \$5,000	IV	\$50,000 to \$99,999
II	\$5,000 to \$24,999	V	\$100,000 to \$199,999
III	\$25,000 to \$49,999	VI	\$200,000 or more

For the purposes of this form, the following definitions apply:

- **“Business”** means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.
- **“Income”** for a business means gross income less (i) costs of goods sold, and (ii) operating expenses.
- **“Income”** for an individual means taxable income and shall not include any income received pursuant to a life insurance policy.
- **“Public office”** means any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the president or vice president of the United States, presidential elector, delegate to the political party convention, US Senator, US congressman, or political party office.
- **“Political Subdivision”** means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Examples are: Hospital Service Districts, School Boards and the schools under its authority, Police Jurys, Parish Councils, Board of Aldermen, Cities, Towns, Villages, etc.
- **LSA-R.S. 18:1505.2(L)(3)(a)** refers to (i) any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law; (ii) any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted, and (iii) any person who holds a license

Instructions (continued):

or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act, and any person who owns a casino where such gaming operations are licensed.

“Consumer credit transaction” means a consumer loan or a consumer credit sale but does not include a motor vehicle credit transaction made pursuant to R.S. 6:969.1 et seq. R.S. 9:3516(13).

PERSONAL FINANCIAL DISCLOSURE
"TIER 1"
LSA-R.S. 42:1124

ORIGINAL REPORT AMENDED REPORT

This Report Covers Calendar Year 20__

I hold an office that would require a filing under Tier 2, Tier 2.1 or Tier 3. If this box is checked, filer must complete Schedule K.

Full Name of Filer: _____

Residence Address:

Street _____ Apt. # _____
City _____ State _____ Zip Code _____

Office or Position Held _____

Full Name of Spouse: _____

Spouse's Occupation: _____

Principal Business Address of Spouse:

Street _____ Apt. # _____
City _____ State _____ Zip Code _____

- (A) I certify that I have filed my federal income tax return for the previous year.
 (B) I certify that I have filed my state income tax return for the previous year.

Or

- (A) I certify that I have filed for an extension of my federal income tax return for the previous year.
 (B) I certify that I have filed for an extension of my state income tax return for the previous year.

CERTIFICATION OF ACCURACY

I do hereby certify, after having been first duly sworn, that the information contained in this personal financial disclosure form is true and correct to the best of my knowledge, information and belief.

Signature of Filer

Sworn to and subscribed before me this _____ day of _____, 20__.

Notary Public
Printed Name: _____
Commission Expires _____

ID# _____

Page 1 of ____

SCHEDULE A
EMPLOYMENT INFORMATION

Please disclose the name of the employer, job title, a brief description of the job description for each full-time or part-time employment position held by the individual or spouse.

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

SCHEDULE B
POSITIONS - BUSINESS

The name, address, brief description, nature of association, and the amount of interest in each business in which you or your spouse is a director, officer, owner, partner, member, or trustee, AND in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business.

Note: For this page ONLY, the "amount of interest" must be reported as a percentage figure.

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

SCHEDULE C
POSITIONS - NONPROFIT

The name, address, brief description of, and nature of association with a nonprofit organization in which you or your spouse is a director or officer.

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____

Street

Suite #

City

State

Zip Code

Organization
Description _____

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____

Street

Suite #

City

State

Zip Code

Organization
Description _____

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____

Street

Suite #

City

State

Zip Code

Organization
Description _____

SCHEDULE D
INCOME FROM THE STATE, POLITICAL SUBDIVISIONS,
AND/OR GAMING INTERESTS

The name, address, type, and amount of each source of income received by you or your spouse, **or** by any business in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business, which is received from any of the following:

- the state or any political subdivision (see instructions for examples) as defined in Article VI of the Constitution of Louisiana;
- services performed for or in connection with a gaming interest as defined in R.S. 18:1505.2L(3)(a).

Note: For this page ONLY, the "amount of income" must be reported as an exact dollar figure.

Filer Spouse Business

Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____

Street

Suite #

City

State

Zip Code

Filer Spouse Business

Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____

Street

Suite #

City

State

Zip Code

Filer Spouse Business

Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____

Street

Suite #

City

State

Zip Code

**SCHEDULE E
INCOME**

The name, address, type, nature of services rendered, and amount of each source of income in excess of \$1,000 received by you or your spouse.

NOTE: If the income is derived from professional or consulting services and the disclosure of the name or address of the source of income is prohibited by law or by professional code, such income should be disclosed on Schedule F.

DO NOT include income derived from child support and alimony payments contained in a court order OR from disability payments from any source. **INCOME SHALL BE REPORTED BY CATEGORY.**

DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULE D.

Filer Spouse Amount of Income: I II III IV V VI

Name of Source of Income _____ Type: _____

Address _____

Street

Suite #

City

State

Zip Code

Nature of Services Rendered _____

Filer Spouse Amount of Income: I II III IV V VI

Name of Source of Income _____ Type: _____

Address _____

Street

Suite #

City

State

Zip Code

Nature of Services Rendered _____

Filer Spouse Amount of Income: I II III IV V VI

Name of Source of Income _____ Type: _____

Address _____

Street

Suite #

City

State

Zip Code

Nature of Services Rendered _____

Filer Spouse Amount of Income: I II III IV V VI

Name of Source of Income _____ Type: _____

Address _____

Street

Suite #

City

State

Zip Code

Nature of Services Rendered _____

SCHEDULE F
INCOME FROM CERTAIN PROFESSIONAL OR CONSULTING SERVICES

Check if no income was received from professional or consulting services for which the disclosure of the name or address of the source of income is prohibited by law or by professional code.

For income derived from professional or consulting services, including mental health, medical health, or legal services, when the disclosure of the name or address of the source of income is prohibited by law or by professional code, report the number of clients and amount of income for the applicable industry types below.

INCOME SHALL BE REPORTED BY CATEGORY.

Industry Type	# of Clients	Amount	Individual, Spouse or Both
D-1 UTILITIES			
Electric		I II III IV V VI	
Gas		I II III IV V VI	
Telephone		I II III IV V VI	
Water		I II III IV V VI	
Cable television companies		I II III IV V VI	
D-2 TRANSPORTATION			
Intrastate companies		I II III IV V VI	
Pipeline companies		I II III IV V VI	
Oil and gas exploration		I II III IV V VI	
Oil and gas production		I II III IV V VI	
Oil and gas retailers		I II III IV V VI	
D-3 FINANCE AND INSURANCE			
Banks		I II III IV V VI	
Savings and loan associations		I II III IV V VI	
Loan and/or finance companies		I II III IV V VI	
Manufacturing firms		I II III IV V VI	
Mining companies		I II III IV V VI	
Life insurance companies		I II III IV V VI	
Casualty insurance companies		I II III IV V VI	
Other insurance companies		I II III IV V VI	
D-4 RETAIL COMPANIES			
Beer companies		I II III IV V VI	
Wine companies		I II III IV V VI	
Liquor companies		I II III IV V VI	
Beverage distributors		I II III IV V VI	
Industry Type	# of Clients	Amount	Individual, Spouse or Both
D-5 ASSOCIATIONS			
Trade		I II III IV V VI	
Professional		I II III IV V VI	
D-6 OTHER (SPECIFY)			

**SCHEDULE H
INVESTMENT HOLDINGS**

The name, a brief description, and amount (**in value ranges by category**) of each investment security having a value exceeding \$1,000 held by you or your spouse, excluding variable annuities, variable life insurance, variable universal life insurance, whole life insurance, any other life insurance product, mutual funds, education investment accounts, retirement investment accounts, government bonds, and cash or cash equivalent investments. (NOTE: Exclude any information concerning any property held and administered for any person other than you or your spouse under a trust, tutorship, curatorship, or other custodial instrument.)

Individual, Spouse, or Both	Name of Security	Description	Amount(categories)
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI

**SCHEDULE I
TRANSACTIONS**

A brief description, amount (**in value ranges by category**), and date of any purchase or sale, in excess of \$1,000, of any immovable property AND of any personally owned tax credit certificates, stocks, bonds, or commodities futures, including any option to acquire or dispose of any immovable property or of any personally owned tax credit certificates, stocks, bonds, or commodities futures. (NOTE: Exclude variable annuities, variable life insurance, variable universal life insurance.)

Individual, Spouse, or Both	Transaction Date	Description of Transaction	Amount(categories)
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV V VI

**SCHEDULE J
LIABILITIES**

The name and address of each creditor, amount, and name of each guarantor, if any, to whom you or your spouse owes any liability which exceeds \$10,000. **AMOUNT SHALL BE REPORTED BY CATEGORY.**

NOTE: Exclude the following:

- any loan secured by movable property, if such loan does not exceed the purchase price of the movable property which secures it;
- any liability, secured or unsecured, which is guaranteed by you or your spouse for a business in which you or your spouse owns any interest, provided that the liability is in the name of the business and, if the liability is a loan, that you or your spouse does not use proceeds from the loan for personal use unrelated to business;
- any loan from an immediate family member, unless such family member is a registered lobbyist, or his principal or employer is a registered lobbyist, or he employs or is a principal of a registered lobbyist, or unless such family member has a contract with the state.

Filer Spouse Nature of Liability_____

Name of Creditor_____ Amount: I II III IV V VI

Address _____
Street Suite #
City State Zip Code

Name of Guarantor (if any)_____

Filer Spouse Nature of Liability_____

Name of Creditor_____ Amount: I II III IV V VI

Address _____
Street Suite #
City State Zip Code

Name of Guarantor (if any)_____

Filer Spouse Nature of Liability_____

Name of Creditor_____ Amount: I II III IV V VI

Address _____
Street Suite #
City State Zip Code

Name of Guarantor (if any)_____

PERSONAL FINANCIAL DISCLOSURE
"TIER 2"
LSA-R.S. 42:1124.2

USE THIS FORM ONLY IF YOU ARE A CANDIDATE:

This form applies only to:

- (1) Candidates for the Legislature
 - (2) Candidates seeking office in a voting district with a population over 5,000
 - (3) Candidates for the BESE Board
-

(1) Candidates must file the statement within 10 days of filing a notice of candidacy for one of the above offices.

(2) If you hold more than one office that requires the filing of a financial disclosure statement, please note that only one financial disclosure report shall be filed by the filer. Such report shall be filed under the highest Tier (with Tier 1 being the highest, then Tier 2, then Tier 2.1 and Tier 3 being the lowest).

INSTRUCTIONS:

Use as many pages of each section of the form as are required. Machine copies of the form's pages may be used. Additional copies of the forms or individual schedules may be obtained on the Louisiana Board of Ethics website at www.ethics.state.la.us. In addition, information sheets and Frequently Asked Questions (FAQs) are available on the Louisiana Board of Ethics website.

Please file the completed form with the Louisiana Board of Ethics by mail or facsimile at:

**P.O. Box 4368
Baton Rouge, LA 70821**

or

(225) 381-7271

The report shall reflect income, amounts, and values for the activities with respect to employment, transactions, liabilities, etc. for the prior calendar year. For example, if the report is due on May 15, 2009, the information provided should be for the 2008 calendar year.

NOTE: Where amounts are required herein, indicate such amounts by using one of the following categories, unless otherwise indicated on the schedule:

- I** **Less than \$5,000**
- II** **\$5,000 to \$24,999**
- III** **\$25,000 to \$100,000**
- IV** **more than \$100,000**

Instructions (continued):

For the purposes of this form, the following definitions apply:

- “**Business**” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.
- “**Income**” for a business means gross income less (i) costs of goods sold, and (ii) operating expenses.
- “**Income**” for an individual means taxable income and shall not include any income received pursuant to a life insurance policy.
- “**Public office**” means any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the president or vice president of the United States, presidential elector, delegate to the political party convention, US Senator, US congressman, or political party office.
- “**Political Subdivision**” means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Examples are: Hospital Service Districts, School Boards and the schools under its authority, Police Jurys, Parish Councils, Board of Aldermen, Cities, Towns, Villages, etc.
- **LSA-R.S. 18:1505.2(L)(3)(a)** refers to (i) any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law; (ii) any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted, and (iii) any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act, and any person who owns a casino where such gaming operations are licensed.
- “**Consumer credit transaction**” means a consumer loan or a consumer credit sale but does not include a motor vehicle credit transaction made pursuant to R.S. 6:969.1 et seq. R.S. 9:3516(13).

PERSONAL FINANCIAL DISCLOSURE

"TIER 2"

LSA-R.S. 42:1124.2

ORIGINAL REPORT

AMENDED REPORT

This Report Covers Calendar Year 20____

I hold an office that would require a filing under Tier 2.1 or Tier 3. If this box is checked, filer must complete Schedule L.

Full Name of Filer: _____

Mailing Address:

_____	_____	_____	_____
Street		Apt. #	
_____	_____	_____	_____
City	State		Zip Code

Office Held or Position Sought _____

Date of Election _____ Date of Qualifying _____

Full Name of Spouse: _____

Spouse's Occupation: _____

Spouse's Principal Business Address, if any:

_____	_____	_____	_____
Street		Apt. #	
_____	_____	_____	_____
City	State		Zip Code

(A) I certify that I have filed my federal income tax return for the previous year.

(B) I certify that I have filed my state income tax return for the previous year.

or

(A) I certify that I have filed for an extension of my federal income tax return for the previous year.

(B) I certify that I have filed for an extension of my state income tax return for the previous year.

or

I certify that I have not filed my federal or state income tax return for the previous year as the returns are not due as of the date of qualifying.

CERTIFICATION OF ACCURACY

**I do hereby certify, after having been first
duly sworn, that the information contained**

**in this personal financial disclosure form is
true and correct to the best of my knowledge,
information and belief.**

Signature of Filer

Sworn to and subscribed before me

this _____ day of _____,
20____.

Notary Public

Printed Name: _____

ID# _____ Commission Expires _____

SCHEDULE A
EMPLOYMENT INFORMATION

Please disclose the name of the employer, job title, a brief description of the job description for each full-time or part-time employment position held by the individual or spouse.

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Employer Address _____
Street _____ Suite # _____

City _____ State _____ Zip Code _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Employer Address _____
Street _____ Suite # _____

City _____ State _____ Zip Code _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Employer Address _____
Street _____ Suite # _____

City _____ State _____ Zip Code _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Employer Address _____
Street _____ Suite # _____

City _____ State _____ Zip Code _____

Job Description _____

SCHEDULE B
POSITIONS - BUSINESS

The name, address, brief description, nature of association, and the amount of interest in each business in which you or your spouse is a director, officer, owner, partner, member, or trustee, AND in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business.

Note: For this page ONLY, the "amount of interest" must be reported as a percentage figure.

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Both Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

SCHEDULE C
POSITIONS - NONPROFIT

The name, address, brief description of, and nature of association with a nonprofit organization in which you or your spouse is a director or officer.

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____
Street Suite #

City State Zip Code

Organization Description _____

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____
Street Suite #

City State Zip Code

Organization Description _____

Filer Spouse

Name of Organization _____ Nature of Association _____

Address _____
Street Suite #

City State Zip Code

Organization Description _____

SCHEDULE E
INCOME RECEIVED FROM EMPLOYMENT

Please disclose the name and address of the employer that provides income, job title, a brief description of the nature of services rendered and the amount of income for each full-time or part-time employment position held by the individual or spouse. **INCOME SHALL BE REPORTED BY CATEGORY.**
DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULE D.
INCOME RECEIVED THROUGH SELF-EMPLOYMENT SHALL BE DISCLOSED ON SCHEDULE F.

Filer Spouse Amount of Income: I II III IV

Full-time Part-time

Employer Name _____

Employer Address _____
Street Suite #

City State Zip Code

Nature of services rendered pursuant to the employment _____

Filer Spouse Amount of Income: I II III IV

Full-time Part-time

Employer Name _____

Employer Address _____
Street Suite #

City State Zip Code

Nature of services rendered pursuant to the employment _____

Filer Spouse Amount of Income: I II III IV

Full-time Part-time

Employer Name _____

Employer Address _____
Street Suite #

City State Zip Code

Nature of services rendered pursuant to the employment _____

SCHEDULE F
INCOME FROM BUSINESS INTERESTS

The name and address of all businesses which provide income to you or your spouse, including a brief description of the nature of services rendered for each business or the reason such income was received, and the aggregate amount (in value ranges by category) of such income, excluding income reported in another section of this report. **DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULES D AND/OR E.**

Aggregate Amount of Income received from the business interests listed on Schedule F: I II III IV

- Filer
 Spouse

Name of Business _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Description of services rendered for the business or a reason the income was received:

- Filer
 Spouse

Name of Business _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Description of services rendered for the business or a reason the income was received:

- Filer
 Spouse

Name of Business _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Description of services rendered for the business or a reason the income was received:

**SCHEDULE G
OTHER INCOME**

A description of any other type of income, exceeding \$1,000 received by the individual or spouse, including a brief description of the nature of the services rendered or the reason such income was received, and the amount of income (**in value ranges by category**), excluding income reported in another section of this report.

Note: Do NOT include income derived from child support and alimony payments contained in a court order OR from disability payments from any source. **DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULES D, E and/or F.**

Filer Amount of Income: I II III IV
 Spouse

Description of Income _____ - _____

Description of service rendered or the reason the income was received:

Filer Amount of Income: I II III IV
 Spouse

Description of Income _____ - _____

Description of service rendered or the reason the income was received:

Filer Amount of Income: I II III IV
 Spouse

Description of Income _____ - _____

Description of service rendered or the reason the income was received:

SCHEDULE H
IMMOVABLE PROPERTY

A brief description, fair market value or use value (**in value ranges by category**) as determined by the assessor for purposes of ad valorem taxes, and the location of the property by state and parish or county of each parcel of immovable property in which you or your spouse, either individually or collectively, has an interest provided that the fair market value or use value as determined by the assessor exceeds \$2,000.

Filer Spouse Both

Value of Property: I II III IV

Location of property:

Country _____

State _____

Parish/County _____

Property Description _____

Filer Spouse Both

Value of Property: I II III IV

Location of property:

Country _____

State _____

Parish/County _____

Property Description _____

Filer Spouse Both

Value of Property: I II III IV

Location of property:

Country _____

State _____

Parish/County _____

Property Description _____

Filer Spouse Both

Value of Property: I II III IV

Location of property:

Country _____

State _____

Parish/County _____

Property Description _____

**SCHEDULE I
INVESTMENT HOLDINGS**

The name and a brief description of each investment security having a value exceeding \$5,000 held by you or your spouse, excluding variable annuities, variable life insurance, variable universal life insurance, whole life insurance, any other life insurance product, mutual funds, education investment accounts, retirement investment accounts, government bonds, and cash or cash equivalent investments. (NOTE: Exclude any information concerning any property held and administered for any person other than you or your spouse under a trust, tutorship, curatorship, or other custodial instrument.)

Individual, Spouse, or Both	Name of Security	Description
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		

**SCHEDULE J
TRANSACTIONS**

A brief description, amount (**in value ranges by category**), and date of any purchase or sale, in excess of \$5,000, of any immovable property AND of any personally owned tax credit certificates, stocks, bonds, or commodities futures, including any option to acquire or dispose of any immovable property or of any personally owned tax credit certificates, stocks, bonds, or commodities futures. (NOTE: Exclude variable annuities, variable life insurance, variable universal life insurance, whole life insurance, any other life insurance product, mutual funds, education investment accounts, retirement investment accounts, government bonds, cash or cash equivalent investments.)

Individual, Spouse, or Both	Transaction Date	Description of Transaction	Amount
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV

SCHEDULE K
LIABILITIES

The name and address of each creditor, and name of each guarantor, if any, to whom you or your spouse owes any liability which exceeds \$10,000 on the last day of the reporting period.

NOTE: Exclude the following:

- any loan secured by movable property, if such loan does not exceed the purchase price of the movable property which secures it;
- any liability, secured or unsecured, which is guaranteed by you or your spouse for a business in which you or your spouse owns any interest, provided that the liability is in the name of the business and, if the liability is a loan, that you or your spouse does not use proceeds from the loan for personal use unrelated to business;
- any loan by a licensed financial institution which loans money in the ordinary course of business;
- any liability resulting from a consumer credit transaction as defined in R.S. 9:3516(13); and,
- any loan from an immediate family member, unless such family member is a registered lobbyist, or his principal or employer is a registered lobbyist, or he employs or is a principal of a registered lobbyist, or unless such family member has a contract with the state.

Filer Spouse

Name of Creditor _____

Address _____

Street

Suite #

City

State

Zip Code

Name of Guarantor (if any) _____

Filer Spouse

Name of Creditor _____

Address _____

Street

Suite #

City

State

Zip Code

Name of Guarantor (if any) _____

Filer Spouse

Name of Creditor _____

Address _____

Street

Suite #

City

State

Zip Code

Name of Guarantor (if any) _____

PERSONAL FINANCIAL DISCLOSURE
"TIER 2"
LSA-R.S. 42:1124.2

This form applies only to:

- (1) Legislators
 - (2) Elected officials representing a voting district with a population over 5,000
 - (3) BESE members
 - (4) Board of Ethics members
 - (5) Ethics Adjudicatory Board members
 - (6) Ethics Board Administrator
-

1. Due annually by May 15th.

2. Extension: If the filer files for an extension of his federal income tax and notice has been filed with the Board of Ethics by May 15th that such an extension has been made, then the financial statement must be filed within 30 days after the filer files his federal income taxes.

3. If you hold more than one office that requires the filing of a financial disclosure statement, please note that only one financial disclosure report shall be filed by the filer. Such report shall be filed under the highest Tier (with Tier 1 being the highest, then Tier 2, then Tier 2.1 and Tier 3 being the lowest).

INSTRUCTIONS:

Use as many pages of each section of the form as are required. Machine copies of the form's pages may be used. Additional copies of the forms or individual schedules may be obtained on the Louisiana Board of Ethics website at www.ethics.state.la.us. In addition, information sheets and Frequently Asked Questions (FAQs) are available on the Louisiana Board of Ethics website.

Please file the completed form with the Louisiana Board of Ethics by mail or facsimile at:

P.O. Box 4368 or (225) 381-7271
Baton Rouge, LA 70821

The report shall reflect income, amounts, and values for the activities with respect to employment, transactions, liabilities, etc. for the prior calendar year. For example, if the report is due on May 15, 2009, the information provided should be for the 2008 calendar year.

NOTE: Where amounts are required herein, indicate such amounts by using one of the following categories, unless otherwise indicated on the schedule:

- I Less than \$5,000**
- II \$5,000 to \$24,999**
- III \$25,000 to \$100,000**
- IV more than \$100,000**

Instructions (continued):

For the purposes of this form, the following definitions apply:

- “**Business**” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.
- “**Income**” for a business means gross income less (i) costs of goods sold, and (ii) operating expenses.
- “**Income**” for an individual means taxable income and shall not include any income received pursuant to a life insurance policy.
- “**Public office**” means any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the president or vice president of the United States, presidential elector, delegate to the political party convention, US Senator, US congressman, or political party office.
- “**Political Subdivision**” means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Examples are: Hospital Service Districts, School Boards and the schools under its authority, Police Jurys, Parish Councils, Board of Aldermen, Cities, Towns, Villages, etc.
- **LSA-R.S. 18:1505.2(L)(3)(a)** refers to (i) any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law; (ii) any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted, and (iii) any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act, and any person who owns a casino where such gaming operations are licensed.
- “**Consumer credit transaction**” means a consumer loan or a consumer credit sale but does not include a motor vehicle credit transaction made pursuant to R.S. 6:969.1 et seq. R.S. 9:3516(13).

PERSONAL FINANCIAL DISCLOSURE

"TIER 2"

LSA-R.S. 42:1124.2

ORIGINAL REPORT

AMENDED REPORT

I hold an office that would require a filing under Tier 2.1 or Tier 3. If this box is checked, filer must complete Schedule L.

This Report Covers Calendar Year 20____

Full Name of Filer:_____

Office or Position Held_____

Mailing Address:

Street _____ Apt. # _____

City _____ State _____ Zip Code _____

Full Name of Spouse:_____

Spouse's Occupation:_____

Spouse's Principal Business Address, if any:

Street _____ Apt. # _____

City _____ State _____ Zip Code _____

(A) I certify that I have filed my federal income tax return for the previous year.

(B) I certify that I have filed my state income tax return for the previous year.

or

(A) I certify that I have filed for an extension of my federal income tax return for the previous year.

(B) I certify that I have filed for an extension of my state income tax return for the previous year.

CERTIFICATION OF ACCURACY

I do hereby certify, after having been first duly sworn, that the information contained in this personal financial disclosure form is true and correct to the best of my knowledge, information and belief.

Signature of Filer

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

Printed Name:_____

ID#_____

Commission Expires_____

Page 1 of ____

SCHEDULE A
EMPLOYMENT INFORMATION

Please disclose the name of the employer, job title, a brief description of the job description for each full-time or part-time employment position held by the individual or spouse.

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Employer Address _____
Street Suite #

City State Zip Code

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Employer Address _____
Street Suite #

City State Zip Code

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Employer Address _____
Street Suite #

City State Zip Code

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Employer Address _____
Street Suite #

City State Zip Code

Job Description _____

SCHEDULE B
POSITIONS - BUSINESS

The name, address, brief description, nature of association, and the amount of interest in each business in which you or your spouse is a director, officer, owner, partner, member, or trustee, AND in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business.

Note: For this page ONLY, the "amount of interest" must be reported as a percentage figure.

Filer Spouse Both

Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Both

Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Both

Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

SCHEDULE E
INCOME RECEIVED FROM EMPLOYMENT

Please disclose the name and address of the employer that provides income, job title, a brief description of the nature of services rendered and the amount of income for each full-time or part-time employment position held by the individual or spouse. **INCOME SHALL BE REPORTED BY CATEGORY.**
DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULE D.
INCOME RECEIVED THROUGH SELF-EMPLOYMENT SHALL BE DISCLOSED ON SCHEDULE F.

Filer Spouse Amount of Income: I II III IV

Full-time Part-time

Employer Name _____

Employer Address _____
Street Suite #

City State Zip Code

Nature of services rendered pursuant to the employment _____

Filer Spouse Amount of Income: I II III IV

Full-time Part-time

Employer Name _____

Employer Address _____
Street Suite #

City State Zip Code

Nature of services rendered pursuant to the employment _____

Filer Spouse Amount of Income: I II III IV

Full-time Part-time

Employer Name _____

Employer Address _____
Street Suite #

City State Zip Code

Nature of services rendered pursuant to the employment _____

SCHEDULE F
INCOME FROM BUSINESS INTERESTS

The name and address of all businesses which provide income to you or your spouse, including a brief description of the nature of services rendered for each business or the reason such income was received, and the aggregate amount (in value ranges by category) of such income, excluding income reported in another section of this report. **DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULES D AND/OR E.**

Aggregate Amount of Income received from the business interests listed on Schedule F: I II III IV

- Filer
 Spouse

Name of Business _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Description of services rendered for the business or a reason the income was received:

- Filer
 Spouse

Name of Business _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Description of services rendered for the business or a reason the income was received:

- Filer
 Spouse

Name of Business _____

Address _____
Street _____ Suite # _____
City _____ State _____ Zip Code _____

Description of services rendered for the business or a reason the income was received:

**SCHEDULE G
OTHER INCOME**

A description of any other type of income, exceeding \$1,000 received by the individual or spouse, including a brief description of the nature of the services rendered or the reason such income was received, and the amount of income (**in value ranges by category**), excluding income reported in another section of this report.

Note: Do NOT include income derived from child support and alimony payments contained in a court order OR from disability payments from any source. **DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULES D, E and/or F.**

- Filer
 Spouse

Amount of Income: I II III IV

Description of Income _____

Description of service rendered or the reason the income was received:

- Filer
 Spouse

Amount of Income: I II III IV

Description of Income _____

Description of service rendered or the reason the income was received:

- Filer
 Spouse

Amount of Income: I II III IV

Description of Income _____

Description of service rendered or the reason the income was received:

SCHEDULE H
IMMOVABLE PROPERTY

A brief description, fair market value or use value (**in value ranges by category**) as determined by the assessor for purposes of ad valorem taxes, and the location of the property by state and parish or county of each parcel of immovable property in which you or your spouse, either individually or collectively, has an interest provided that the fair market value or use value as determined by the assessor exceeds \$2,000.

Filer Spouse Both

Value of Property: I II III IV

Location of property:

Country _____

State _____

Parish/County _____

Property Description _____

Filer Spouse Both

Value of Property: I II III IV

Location of property:

Country _____

State _____

Parish/County _____

Property Description _____

Filer Spouse Both

Value of Property: I II III IV

Location of property:

Country _____

State _____

Parish/County _____

Property Description _____

Filer Spouse Both

Value of Property: I II III IV

Location of property:

Country _____

State _____

Parish/County _____

Property Description _____

**SCHEDULE I
INVESTMENT HOLDINGS**

The name and a brief description of each investment security having a value exceeding \$5,000 held by you or your spouse, excluding variable annuities, variable life insurance, variable universal life insurance, whole life insurance, any other life insurance product, mutual funds, education investment accounts, retirement investment accounts, government bonds, and cash or cash equivalent investments. (NOTE: Exclude any information concerning any property held and administered for any person other than you or your spouse under a trust, tutorship, curatorship, or other custodial instrument.)

Individual, Spouse, or Both	Name of Security	Description
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both		

**SCHEDULE J
TRANSACTIONS**

A brief description, amount (**in value ranges by category**), and date of any purchase or sale, in excess of \$5,000, of any immovable property AND of any personally owned tax credit certificates, stocks, bonds, or commodities futures, including any option to acquire or dispose of any immovable property or of any personally owned tax credit certificates, stocks, bonds, or commodities futures. (NOTE: Exclude variable annuities, variable life insurance, variable universal life insurance, whole life insurance, any other life insurance product, mutual funds, education investment accounts, retirement investment accounts, government bonds, cash or cash equivalent investments.)

Individual, Spouse, or Both	Transaction Date	Description of Transaction	Amount
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV
<input type="checkbox"/> Filer <input type="checkbox"/> Spouse <input type="checkbox"/> Both			I II III IV

§1320. Statements Filed Pursuant to Section 11242.1
of the Code of Governmental Ethics

PERSONAL FINANCIAL DISCLOSURE
“TIER 2.1”
LSA-R.S. 42:1124.2.1

This form applies only to:

- (1) Each member and designee of a board or commission (see definition below) with the authority to expend, disburse, or invest \$10,000 in a fiscal year.
 - (2) Civil Service Commission members
 - (3) Stadium and Exposition District commissioners
-

DUE ANNUALLY BY MAY 15TH

The statute provides NO exceptions to this filing date.

INSTRUCTIONS

Use as many pages of each section of the form as are required. Machine copies of the form's pages may be used. Additional copies of the forms or individual schedules may be obtained on the Louisiana Board of Ethics website at www.ethics.state.la.us. In addition, information sheets and Frequently Asked Questions (FAQs) are available on the Louisiana Board of Ethics website.

Please file the completed form with the Louisiana Board of Ethics by mail or facsimile at:

P.O. Box 4368 or (225) 381-7271
Baton Rouge, LA 70821

The report shall reflect income, amounts, and values for the activities with respect to employment, transactions, liabilities, etc. for the prior calendar year. For example, if the report is due on May 15, 2009, the information provided should be for the 2008 calendar year.

If you hold more than one office that requires the filing of a financial disclosure statement, please note that only one financial disclosure report shall be filed by the filer. Such report shall be filed under the highest Tier (with Tier 1 being the highest, then Tier 2, then Tier 2.1 and Tier 3 being the lowest).

For the purposes of this form, the following definitions apply:

- **“Board or commission”** shall mean:
 - Each board, commission, and like entity created by law or executive order that is made a part of the executive branch, or that is placed in an executive branch department or in the office of the governor or lieutenant governor by law or executive order, or that exercises any authority or performs any function of state government.
 - Each board, commission, and like entity created by the constitution, by law, by a political subdivision, or jointly by two or more political subdivisions as a governing authority of a political subdivision of the state or local government.

Instructions (continued):

- “**Board or commission**” shall **NOT** mean:
 - The governing authority of a parish
 - Any board or commission that governs a political subdivision created by a single parish governing authority of a parish with a population of 200,000 or less, or any subdistrict of such a political subdivision.
 - The governing authority of a municipality
 - Any board or commission that governs a political subdivision created by a single municipal governing authority of a municipality with a population of 25,000 or less, or any subdistrict of such a political subdivision.
 - A board of directors of a private nonprofit corporation that is not created by law.
- “**Business**” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.
- “**Income**” for a business means gross income less (i) costs of goods sold, and (ii) operating expenses.
- “**Income**” for an individual means taxable income and shall not include any income received pursuant to a life insurance policy.
- “**Public office**” means any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the president or vice president of the United States, presidential elector, delegate to the political party convention, US Senator, US congressman, or political party office.
- “**Political Subdivision**” means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Examples are: Hospital Service Districts, School Boards and the schools under its authority, Police Jurys, Parish Councils, Board of Aldermen, Cities, Towns, Villages, etc.
- **LSA-R.S. 18:1505.2(L)(3)(a)** refers to (i) any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law; (ii) any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted, and (iii) any person who holds a license or entered into a contract for the conduct of casino gaming operations, who holds a license or permit as a distributor of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Economic Development and Gaming Corporation Act, and any person who owns a casino where such gaming operations are licensed.

PERSONAL FINANCIAL DISCLOSURE
"TIER 2.1"
LSA-R.S. 42:1124.2.1

ORIGINAL REPORT

AMENDED REPORT

This Report Covers Calendar Year 20____

I hold multiple offices/positions that fall under Tier 2.1 and/or would require a filing under Tier 3. If this box is checked, filer must complete Schedule E.

Full Name of Filer: _____

Mailing Address:

Street	Apt. #
City	State
	Zip Code

Name of Board or Commission _____

Date of Appointment _____ Expiration of Appointment _____

Full Name of Spouse: _____

Spouse's Occupation: _____

Spouse's Principal Business Address, if any:

Street	Apt. #
City	State
	Zip Code

(A) I certify that I have filed my federal income tax return for the previous year.

(B) I certify that I have filed my state income tax return for the previous year.

or

(A) I certify that I have filed for an extension of my federal income tax return for the previous year.

(B) I certify that I have filed for an extension of my state income tax return for the previous year.

I do hereby certify that neither I nor any member of my immediate family has a personal or financial interest in any entity, contract, or business, or a personal or financial relationship, that in any way poses a conflict of interest, which would affect the impartial performance of my duties. OR

I have attached a statement describing each conflict and action I am taking to resolve or avoid this conflict.

[CERTIFICATION OF ACCURACY ON FOLLOWING PAGE]

Page 1 of ____

CERTIFICATION OF ACCURACY

I do hereby certify that the information contained in this personal financial disclosure form is true and correct to the best of my knowledge and belief.

Signature of Filer

Page 2 of ____

**SCHEDULE A
EMPLOYMENT INFORMATION**

Please disclose the name of the employer, job title, a brief description of the job description for each full-time or part-time employment position held by the individual or spouse.

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

Filer Spouse Full-time Part-time

Employer Name _____ Job Title _____

Job Description _____

SCHEDULE C
POSITIONS - BUSINESS

The name, address, brief description, nature of association, and the amount of interest in each business in which you or your spouse is a director, officer, owner, partner, member, or trustee, AND in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business. **Note: For this page ONLY, the "amount of interest" must be reported as a percentage figure.**

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business Description _____

Nature of Association _____

PERSONAL FINANCIAL DISCLOSURE
"TIER 1"
LSA-R.S. 42:1124.3

ORIGINAL REPORT

AMENDED REPORT

This Report Covers Calendar Year 20____

I hold an office that would require a filing under Tier 2, Tier 2.1 or Tier 3.

Full Name of Filer: _____

Mailing Address:

Street Apt. #

City State Zip Code

Office Held or Position Sought _____

Date of Election _____ Date of Qualifying _____

Full Name of Spouse: _____

Spouse's Occupation: _____

Spouse's Principal Business Address, if any:

Street Suite #

City State Zip Code

(A) I certify that I have filed my federal income tax return for the previous year.

(B) I certify that I have filed my state income tax return for the previous year.

or

(A) I certify that I have filed for an extension of my federal income tax return for the previous year.

(B) I certify that I have filed for an extension of my state income tax return for the previous year.

or

I certify that I have not filed my federal or state income tax return for the previous year as the returns are not due as of the date of qualifying.

CERTIFICATION OF ACCURACY

I do hereby certify, after having been first duly sworn, that the information contained in this personal financial disclosure form is true and correct to the best of my knowledge, information and belief.

Signature of Filer

Page 1 of ____

PERSONAL FINANCIAL DISCLOSURE
"TIER 3"
LSA-R.S. 42:1124.3

This form applies only to:

- (1) Elected officials representing a voting district with a population of fewer than 5,000; and
-

1. Due annually by May 15th. The statute provides NO exceptions to this filing date.

2. If you hold more than one office that requires the filing of a financial disclosure statement, please note that only one financial disclosure report shall be filed by the filer. Such report shall be filed under the highest Tier (with Tier 1 being the highest, then Tier 2, then Tier 2.1 and Tier 3 being the lowest).

INSTRUCTIONS

Use as many pages of each section of the form as are required. Machine copies of the form's pages may be used. Additional copies of the forms or individual schedules may be obtained on the Louisiana Board of Ethics website at www.ethics.state.la.us. In addition, information sheets and Frequently Asked Questions (FAQs) are available on the Louisiana Board of Ethics website.

Complete all sections (if not applicable, so indicate). However, the filer need only submit those schedules which are applicable. Please type or print. Use blue or black ink.

Please file the completed form with the Louisiana Board of Ethics by mail or facsimile at:

P.O. Box 4368 or (225) 381-7271
Baton Rouge, LA 70821

The report shall reflect income, amounts, and values for the activities with respect to employment, transactions, liabilities, etc. for the prior calendar year. For example, if the report is due on May 15, 2009, the information provided should be for the 2008 calendar year.

NOTE: Where amounts are required herein, indicate such amounts by using one of the following categories, categories, unless otherwise indicated on the schedule:

I	Less than \$5,000	IV	\$50,000 to \$99,999
II	\$5,000 to \$24,999	V	\$100,000 to \$199,999
III	\$25,000 to \$49,999	VI	\$200,000 or more

For the purposes of this form, the following definitions apply:

- **"Business"** means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.
- **"Income"** for a business means gross income less (i) costs of goods sold, and (ii) operating expenses.
- **"Income"** for an individual means taxable income and shall not include any income received pursuant to a life insurance policy.
- **"Public office"** means any state, parish, municipal, ward, district, or other office or position that is filled by election of the voters, except the president or vice president of the United States, presidential elector, delegate to the political party convention, US Senator, US congressman, or political party office.

Instructions (continued)

- “**Political Subdivision**” means a parish, municipality, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Examples are: Hospital Service Districts, School Boards and the schools under its authority, Police Jurys, Parish Councils, Board of Aldermen, Cities, Towns, Villages, etc.

- **LSA-R.S. 18:1505.2(L)(3)(a)** refers to (i) any person who holds a license or permit as a distributor of gaming devices, who holds a license or permit as a manufacturer of gaming devices, who holds a license or permit as a device service entity, and any person who owns a truck stop or a licensed pari-mutuel or off-track wagering facility which is a licensed device establishment, all pursuant to the Video Draw Poker Devices Control Law; (ii) any person who holds a license to conduct gaming activities on a riverboat, who holds a license or permit as a distributor or supplier of gaming devices or gaming equipment including slot machines, or who holds a license or permit as a manufacturer of gaming devices or gaming equipment including slot machines issued pursuant to the Louisiana Riverboat Economic Development and Gaming Control Act, and any person who owns a riverboat upon which gaming activities are licensed to be conducted, and (iii) any person who holds a license

PERSONAL FINANCIAL DISCLOSURE

"TIER 3"

LSA-R.S. 42:1124.3

ORIGINAL REPORT

AMENDED REPORT

This Report Covers Calendar Year _____

Full Name of Filer: _____

Residence Address: _____
Street Apt. #
City State Zip Code

Office or Position Held _____

Full Name of Spouse: _____

Spouse's Occupation: _____

Principal Business Address of Spouse:

Street Apt. #
City State Zip Code

- (A) I certify that I have filed my federal income tax return for the previous year.
- (B) I certify that I have filed my state income tax return for the previous year.
- Or
- (A) I certify that I have filed for an extension of my federal income tax return for the previous year.
- (B) I certify that I have filed for an extension of my state income tax return for the previous year.

CERTIFICATION OF ACCURACY

I do hereby certify, after having been first duly sworn, that the information contained in this personal financial disclosure form is true and correct to the best of my knowledge, information and belief.

Signature of Filer

SCHEDULE A
INCOME FROM THE STATE, POLITICAL SUBDIVISIONS,
AND/OR GAMING INTERESTS

The name, address, type, and amount of each source of income received by you or your spouse, **or** by any business in which you or your spouse, either individually or collectively, owns an interest which exceeds ten percent of that business, which is received from any of the following:

- the state or any political subdivision (see instructions for examples) as defined in Article VI of the Constitution of Louisiana;
- services performed for or in connection with a gaming interest as defined in R.S. 18:1505.2L(3)(a).

Note: For this page ONLY, the "amount of income" must be reported as an exact dollar figure.

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____
Street Suite #

City State Zip Code

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____
Street Suite #

City State Zip Code

Filer Spouse Business Amount of Income \$ _____

Name of Business, if applicable _____

Name of Source of Income _____

Type of Income: State Political Subdivision Gaming Interest

Address _____
Street Suite #

City State Zip Code

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 35:440 (March 2009), amended LR 36:

§1322. Statements Filed Pursuant to Section 1124.5
of the Code of Governmental Ethics

SCHEDULE M
POSITIONS - BUSINESS

The name, address, brief description of, nature of association with and the amount of interest in each business in which you or your spouse is a director, officer, owner, partner, member, or trustee, OR in which you or your spouse owns any interest, excluding a publicly traded corporation.

DO NOT INCLUDE INFORMATION WITH RESPECT TO THOSE BUSINESSES THAT WERE DISCLOSED ON SCHEDULE B.

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business

Description _____

Nature of

Association _____

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business

Description _____

Nature of

Association _____

Filer Spouse Amount of Interest _____%

Name of Business _____

Address _____

Street

Suite #

City

State

Zip Code

Business

Description _____

Nature of

Association _____

SCHEDULE N
INCOME FROM THE STATE AND/OR POLITICAL SUBDIVISIONS

The name, address, type, and amount of each source of income received by you or your spouse, or by any business in which you or your spouse owns an interest, excluding a publicly traded corporation, which is received from the state or any political subdivision as defined in Article VI of the Constitution of Louisiana.

DO NOT INCLUDE INFORMATION WITH RESPECT TO INCOME DISCLOSED ON SCHEDULE D.

Filer Spouse Business Amount of Income _____

Name of Business, if applicable _____

Type of Income: State Political Subdivision

Name of Source of Income _____

Address _____

Street

Suite #

City

State

Zip Code

Filer Spouse Business Amount of Income _____

Name of Business, if applicable _____

Type of Income: State Political Subdivision

Name of Source of Income _____

Address _____

Street

Suite #

City

State

Zip Code

Filer Spouse Business Amount of Income _____

Name of Business, if applicable _____

Type of Income: State Political Subdivision

Name of Source of Income _____

Address _____

Street

Suite #

City

State

Zip Code

Zip Code

SCHEDULE O
INCOME FROM A GOVERNMENTAL ENTITY

The name of each governmental entity from whom the filer or his spouse derives any thing of economic value through any contract or subcontract involving a governmental entity, including the Louisiana Insurance Guaranty Association, the Louisiana Health insurance Guaranty Association, Louisiana Citizens Property Insurance Corporation, the property Insurance Association of Louisiana, and any other quasi public entity, the nature of the contract or subcontract; and the value of thing of economic value derived.

Filer Spouse Value Derived _____

Name of the Governmental Entity _____

Nature of Contract/Subcontract _____

Filer Spouse Value Derived _____

Name of the Governmental Entity _____

Nature of Contract/Subcontract _____

Filer Spouse Value Derived _____

Name of the Governmental Entity _____

Nature of Contract/Subcontract _____

Filer Spouse Value Derived _____

Name of the Governmental Entity _____

Nature of Contract/Subcontract _____

Filer Spouse Value Derived _____

Name of the Governmental Entity _____

Nature of Contract/Subcontract _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 36:

Public Comments

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, LA70821, telephone (225) 219-5600, until 4:45 p.m. on December 10, 2009.

Kathleen M. Allen
Ethics Administrator

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

RULE TITLE: Financial Disclosure Forms

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The estimated costs to implement the financial disclosure forms is \$12,464 in FY 09-10, which accounts for the cost to publish the Notice of Intent and the forms in the State Register.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed forms will have no anticipated effect on revenue collections of the state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed action will affect all elected officials, certain department heads, members of certain boards and commissions and the members of the Louisiana Board of Ethics, the Ethics Administrator and the members of the Ethics Adjudicatory Board with respect to disclosure statements filed with the Board of Ethics.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed forms will not have an effect on competition and employment.

Kathleen M. Allen Ethics Administrator 0911#073	Robert E. Hosse Staff Director Legislative Fiscal Office
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NOTICE OF INTENT

**Department of Civil Service
Board of Ethics**

**Food and Drink Limit
(LAC 52:I.1703)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Civil Service, Louisiana Board of Ethics, has initiated rulemaking procedures to make amendments to the Rules for the Board of Ethics to bring the rules into compliance with current statutory provisions and Section 1115.1C of the Code of Governmental Ethics.

**Title 52
ETHICS**

Part I. Board of Ethics

Chapter 17. Code of Governmental Ethics

§1703. Food and Drink Limit

A. In accordance with R.S. 42:1115.1C, beginning on July 1, 2009, the limit for food, drink or refreshments provided in R.S. 42:1115(A) and (B) is \$53.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1115.1.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 36:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may direct their comments to Kathleen M. Allen, Louisiana Board of Ethics, P.O. Box 4368, Baton Rouge, LA 70821, telephone (225) 219-5600, until 4:45 p.m. on December 10, 2009.

Kathleen M. Allen
Ethics Administrator

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

RULE TITLE: Food and Drink Limit

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated cost to implement the rule, which sets forth the amended monetary limit on the receipt of food and drink by a public servant and public employee, is \$328 in FY 09-10, which accounts for the cost to publish the Notice of Intent and the Rule in the State Register.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed Rule will have no anticipated effect on revenue collections of the state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
The proposed action will affect all public employees and public servants by setting a monetary limit on the receipt of food and drink.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed Rule will not have an effect on competition and employment.

Signature of Agency Head or Designee
Legislative Fiscal Officer or Designee

Kathleen M. Allen Ethics Administrator 0911#072	Robert E. Hosse Staff Director Legislative Fiscal Office
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NOTICE OF INTENT

**Department of Economic Development
Office of Business Development Services**

**Technology Commercialization Credit and Jobs Program
(LAC 13:I.Chapter 27)**

The Department of Economic Development, Office of Business Development Services, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 36:104 and 36:108 hereby give notice of their intent to repeal the existing LAC 13:I.Chapter 27 and adopt the following Rules of the Technology Commercialization Credit and Jobs Program as LAC 13:I.Chapter 27.

The previous Technology Commercialization Credit Program expired December 31, 2006. A new Technology Commercialization Credit and Jobs Program was enacted by Act 401 of the 2007 Regular Session. The purpose of this Chapter is to implement the Technology and Commercialization Credit and Jobs Program as established by R.S. 51:2351 et seq. as enacted by Act 401.

The tax credit is intended to induce companies purchasing the rights to commercialize technology produced or developed at a Louisiana university to locate and grow their businesses in Louisiana; to expand the economy of the state by enlarging its base of technology and research-based businesses; to enlarge the number of quality jobs available to an educated workforce to retain the presence of young people educated in Louisiana colleges and universities; and to attract and retain the finest research faculty to Louisiana universities. Businesses may earn tax credits for costs associated with commercializing technology resulting from research sponsored by Louisiana institutions. Businesses may also earn a rebate of payroll for new jobs created.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 27. Technology Commercialization Credit and Jobs Program

§2701. Purpose and Application

A. The purpose of this Chapter is to implement the Technology Commercialization Credit and Jobs Program as established by R.S. 51:2351 et seq.

B. This Chapter shall be administered to achieve the following purposes:

1. to induce companies purchasing the rights to commercialize technology produced at a Louisiana university to locate and grow their businesses in Louisiana;
2. to expand the economy of the state by enlarging its base of technology and research-based businesses;
3. to enlarge the number of quality jobs available to an educated workforce to retain the presence of young people educated in Louisiana colleges and universities; and
4. to attract and retain the finest research faculty to Louisiana universities.

C. This Chapter shall apply to any person:

1. seeking to become qualified to claim a credit; or
2. claiming a credit.

D. Qualifying individuals or businesses that invest in the commercialization of Louisiana technology in Louisiana may earn, apply for, and be granted a refundable tax credit on any income or corporation franchise tax liability and earn a refundable tax credit based on new jobs created. Qualifying research centers that develop Louisiana technology to be commercialized may earn apply for, and be granted a refundable tax credit based on new jobs created.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2351 and 2353.B.(1).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

§2703. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2352 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Basic Health Benefits Plan—a health benefits plan which shall be determined by the Department of Economic Development to have a value of at least \$1.25 per hour; shall include coverage for basic hospital care, and coverage for physician care; and shall include coverage for health care, which shall be the same coverage as is provided to employees employed in a bona fide executive, administrative, or professional capacity by the employer who are exempt from the minimum wage and maximum hour requirements of the federal Fair Labor Standards Act, 29 U.S.C.A. §201 et seq.

Commercialization—the development of a technology into a commercial product by going through the process of prototyping, securing funding, and other steps necessary to get the final product to the marketplace. Commercialization begins after a technology has been reduced to practice and the company is proceeding to develop a commercial market.

Commercialization Costs—investment in machinery and equipment, all expenditures associated with obtaining the rights to use or the use of technology, including fees related to patents, copyrights, and licenses, payments to Louisiana universities for research agreements, and payments to third-party Louisiana research or clinical trial companies.

Credit Certification—a certification by DED of the amount of the technology commercialization credit earned by a Taxpayer for a particular tax year.

DED—Louisiana Department of Economic Development.

Eligibility Certification—a certification by the DED that a taxpayer is eligible to earn technology commercialization credits.

LDR—Louisiana Department of Revenue.

Machinery and Equipment—machinery or equipment that is a capital asset used in a trade or business subject to depreciation under federal tax law that is placed in service and used in Louisiana.

New Direct Job—employment in Louisiana of an employee working an average of at least 30 hours per week, who was not previously on the *taxpayer's* payroll in Louisiana, nor previously on the payroll of the *taxpayer's* parent entity, subsidiary, or affiliate in Louisiana, or previously on the payroll of any business whose physical plant and employees are substantially the same as those of the *taxpayer* in Louisiana and meets the following requirements:

a. the employee shall occupy a job which did not exist in Louisiana prior to the fiscal year of the *taxpayer* during which the *taxpayer* filed an application for eligibility to earn tax credits pursuant to §2705 below.

b. shall not mean any job that is a result of job shifts due to the gain or loss of an in-state contract to supply goods and services. *New direct job* shall not mean any employees who were retained following the acquisition of all or part of an in-state business by an employer.

Taxpayer—a natural person, business, corporation, or other business entity that seeks to or has become qualified to

claim a credit on any income or corporation franchise tax liability against taxes owed to Louisiana.

Technology—the product or intellectual property owned or research sponsored at a regionally accredited college, technical school, or university located in Louisiana or any product or intellectual property to which significant development or enhancement occurred in Louisiana

Technology Commercialization Credits—credits against Louisiana income or corporation franchise taxes that are earned by a taxpayer for investment in Commercialization Costs.

Technology Jobs Credit—credits against Louisiana income or corporation franchise taxes that are earned by a taxpayer for New Direct Jobs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.B.(1)

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

§2705. Determination of Eligibility to Earn Tax Credits

A. Prior to earning any credits pursuant to the Technology Commercialization Credit and Jobs Program, a taxpayer must apply for and obtain an Eligibility Certification from DED that the taxpayer is eligible to earn such credits.

B. The application for Eligibility Certification must be submitted prior to the end of the taxpayer's tax year for which the taxpayer first seeks to earn a Technology Commercialization Credit or Technology Jobs Credit.

C. A taxpayer shall apply for an eligibility certification by submitting an application on a form specified by the DED and provide at a minimum, the following information:

1. for a Technology Commercialization Credit:
 - a. a description of the technology to be commercialized;
 - b. a description of how and from whom (what university) the technology was acquired including the terms of the acquisition;
 - c. if the technology is not owned by a university, in what manner research was sponsored by the university or what significant development or enhancement to the technology occurred at the university;
 - d. An agreement with a Louisiana regionally accredited college, technical school, university, or research company to commercialize or research a technology;
 - e. a description of the Taxpayer's Louisiana facilities or proposed Louisiana facilities, and the Taxpayer's proposed investment in Machinery and Equipment.
 - f. any other information requested by DED or LDR;
2. for a Technology Jobs Credit:
 - a. a description of the type of entity the Taxpayer is, that is, for profit corporation, LLC, non-profit, governmental entity etc.;
 - b. a description of the type of research the Taxpayer does,
 - c. a listing of proposed New Direct Jobs that the Taxpayer expects to create along with the estimated salary;
 - d. a description of the Taxpayer's health benefits plan that will be offered to employees.

D. DED shall review the application with an emphasis on the eligibility requirements stated in §2707 and, if DED determines that the taxpayer is eligible under the provisions of the Technology Commercialization Credit and Jobs Program to earn Technology Commercialization Credits or Technology Jobs Credits, DED shall issue an eligibility certificate. DED shall maintain a record of all eligibility certificates issued and shall provide a copy of each certificate to the Louisiana Department of Revenue.

E. An eligibility certification shall be valid for a period of five tax years of the taxpayer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

§2707. Requirements For Eligibility.

A. To be eligible for certification under §2705, the taxpayer must meet the following requirements:

1. for a Technology Commercialization Credit:
 - a. the taxpayer must invest in commercialization costs, including investment by purchase or lease of machinery and equipment which is placed into and maintained in service in Louisiana that is directly related to the production of technology or is used to produce resources essential to the production of technology;
 - b. the taxpayer must enter into an agreement with a Louisiana regionally accredited college, technical school, university, or research company to commercialize or research a technology;
2. for a Technology Jobs Credit:
 - a. the applicant must be certified eligible to earn a Technology Commercialization Credit, or be a nonprofit or governmental research center approved by the secretary of the Department of Economic Development;
 - b. the applicant must create a minimum of five new direct jobs in this state as defined by R.S. 51:2453(4) of the Quality Jobs Program;
 - c. the applicant must offer a Basic Health Benefits Plan to the individuals it employs in new direct jobs in this state;
 - d. the new direct jobs shall pay an average minimum of \$50,000 per year in wages to qualify for the new jobs refundable tax credit, excluding wages to a person who owns more than 30 percent of the equity of the applicant.

B. An eligibility certification may be renewed for an additional five tax years on the following conditions:

1. the taxpayer has complied with all requirements of the program for the initial five tax years; and
2. an application for renewal is filed with DED not sooner than the end of the fifth tax year and no later than the end of the sixth tax year;
3. for renewal of the Technology Jobs Credit Eligibility Certification, the new direct jobs shall pay an average minimum of \$56,000.

AUTHORITY NOTE: Promulgated III accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

§2709. Certification of Amount of Credit

A. The Technology Commercialization Tax Credit shall be:

- 1. equal in value to 40 percent of the amount of money invested by the taxpayer applicant in commercialization costs for one business location;
- 2. a refundable credit which may be applied to any income or corporation franchise tax liability owed to the state by the taxpayer;
- 3. limited to an investment of \$250,000 per five-year certification period.

B. The Technology Jobs Credit shall be:

- 1. equal to 6 percent multiplied by the gross payroll of new direct jobs as verified by the Department of Economic Development;
- 2. a refundable credit which may be applied to any income or corporation franchise tax liability owed to the state by the taxpayer.

C. Prior to claiming a Technology Commercialization Credit or Technology Jobs Credit on any tax return, a taxpayer must apply for and obtain a credit certification from DED. A taxpayer must have been issued an eligibility certification before a credit certification may be issued.

D. The application for a credit certification shall be submitted on a form provided by the DED. The application shall include a detailed itemization of all commercialization costs incurred during the tax year.

E. DED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

§2711. Eligible Commercialization Costs

A. Investment in machinery and equipment shall include:

- 1. the purchase price, including any taxes and costs of delivery and installation, and the capitalized amount of a capitalized lease;
- 2. the machinery and equipment must remain in use at the business location during the five tax years the taxpayer is eligible to earn the credit or its expected useful life, whichever is less. The sales price, trade in value, or other value received in the sale or disposition of the machinery or equipment shall be deducted from the commercialization costs for that year.

B. Other expenditures must be associated with obtaining the rights to use or the use of technology, and may include:

- 1. any transaction costs incurred in obtaining technology rights such as attorney fees for negotiation of licensing agreements, accounting, or other fees;
- 2. costs incurred for the use of technology such as royalties or licensing fees; and
- 3. costs incurred in protecting the rights to technology such as costs for filing or obtaining patents, recordation fees.

C. No expenditures for which a research and development tax credit was claimed pursuant to R.S. 47:6015 shall be eligible as a commercialization cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

§2713. Recapture of Credits

A. An application for eligibility certification or credit certification shall constitute:

- 1. a consent by the taxpayer that in the event the taxpayer must repay any technology commercialization credits:
 - a. the Secretary of the Department of Revenue may recover any such amounts as authorized by R.S. 47:1561.2; and
 - b. such amounts will be deemed to constitute refundable tax credit; and

2. a written agreement between the taxpayer and the Secretary of the Department of Revenue for the suspension of the running of prescription for any technology commercialization credits claimed by the taxpayer until one year after the end of the fourth tax year of the eligibility certification;

3. a consent by the taxpayer that the Department of Revenue may disclose to DED, any tax information of the taxpayer related to the earning of, or use of technology commercialization credits by the taxpayer or any other information required by DED for the effective administration of this program, provided that such tax information, shall remain confidential in the possession of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

§2715. Application Fee

A.1. An application fee in the amount of \$250 shall be submitted with each application.

2. All fees shall be made payable to: Louisiana Department of Economic Development

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353 and R.S. 51:936.2.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

§2717. Applicant Receiving Tax Credits not Eligible to Receive Certain other Tax Credits and Exemptions

A. Notwithstanding any other provision of law to the contrary, an applicant who receives tax credits pursuant to the provisions of this Chapter shall not be eligible to receive the other credits or exemptions provided for in the following provisions of law in connection with the activity for which the tax credits or rebates were received:

- 1. the tax credit for generation of new jobs provided for in R.S. 47:34;
- 2. the Louisiana Quality Jobs Program provided for in R.S. 51:2451 et seq.;
- 3. the employer credit for employment of previously unemployed persons provided for in R.S. 47:6004;
- 4. the Louisiana basic skills training tax credit provided for in R.S. 47:6009;

5. the tax credit for employee alcohol and substance abuse treatment programs provided for in R.S. 47:6010;

6. the sales tax rebate and income tax credits of the Enterprise Zone Program provided for in R.S. 51:1787;

7. the reentrant jobs credit for formerly incarcerated employees provided for in R.S. 47:287.748;

8. the corporation income tax credit for new jobs provided for in R.S. 47:287.749;

9. the neighborhood assistance tax credit provided for in R.S. 47:287.753.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 36:

Family Impact Statement

This proposed Rule 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. There should be no known or foreseeable effect on: the stability of the family; the authority and rights of parents regarding the education and supervision of their children; the functioning of the family; on family earnings and family budget; the behavior and responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit written comments to Susan Bigner, Office of Business Development, Business Incentives Services, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Second Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by FAX to (225) 342-9448, or by email to Bigner@la.gov. All comments must be submitted (mailed and received) not later than 5 p.m., on January 4, 2010.

Kristy Mc Kearn
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Technology Commercialization Credit and Jobs Program

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

The proposed rules will have no impact on state or local government expenditures. A form of the Technology Commercialization and Jobs Program has been operating since 2002, and the extension of the program in a new form as reflected in the proposed rule is not anticipated to create a significant increase in workload. The program will continue to be administered by existing personnel.

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

The proposed rule will result in a decrease in state revenue collections. A similar program was in effect from December 31, 2001 through December 31, 2006 with minimal utilization. In Act 401 of the 2007 Regular Session, the program was extended with new guidelines effective 1/1/07. Since the inception of the program in its current form, \$100,000 in investment credits have been issued to one firm (no jobs credits) and ten firms have been confirmed or applied for

eligibility. Since the program is due to sunset on December 31, 2011, it is not expected that a significant cost to the state is forthcoming though if every firm qualified and claimed maximum benefits for one technology and 5 jobs by the sunset date, state revenue would decrease by \$1,700,000 over the remaining life of the program.

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

The only cost to directly affected persons or nongovernmental groups would be the fee of \$250 per application for credits (no fee to apply for eligibility) plus any administrative expenses involved in completion of the application. The estimated economic benefits to directly affected persons or nongovernmental groups is a decrease in operating expenses of start-up technology companies by the amount by the amount of the investment credits and a 6 percent reduction in payroll costs for eligible jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Businesses that apply for and receive tax credits under this program will realize a reduction in the cost of bringing new technologies to the market. These credits will give the private sector a competitive advantage in commercializing Louisiana technologies relative to commercializing technologies elsewhere. These credits will also benefit Louisiana universities and other research institutions by increasing the attractiveness of their technologies and research capabilities to the private sector. The estimate effect on employment and competition is an increase in higher wage technology jobs.

Kristy McKearn
Undersecretary
0911#069

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Economic Development Office of Business Development Office of Entertainment Industry Development

Entertainment Industry Tax Credit
Programs—Digital Media Act
(LAC 61:I.1661-1671)

The Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development pursuant to the authority of R.S. 47:6022 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to adopt the following Rule of the Louisiana Entertainment Industry Tax Credit Programs, specifically the Louisiana Digital Media Act. The purpose of the Rule is to establish program policies and procedures in the administration of the Louisiana Digital Media Act.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter D. Louisiana Digital Media Act

§1661. Purpose

A. The purpose of this Chapter is to administer the Louisiana Digital Media Act as established by R.S. 47:6022.

B. The purpose of this program is to encourage the development in Louisiana of a strong capital base for the production of digital interactive media products and platforms in order to achieve a more independent, self-supporting industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:

§1663. General Description

A. The program offers a tax credit for the producers of digital interactive media projects, which submitted applications prior to January 1, 2009 and for the producers of digital interactive media products and platform projects which submitted applications on or after July 1, 2009.

B. Tax credits are earned per calendar year at the time funds are expended in Louisiana on a state certified production, provided that expenditures are approved and receive final certification from the director and the secretary.

C. Tax credits shall never exceed the total base investment in a state certified production.

D. Tax credits shall be transferable.

E. These Rules shall become effective upon approval by the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs, in accordance with the Administrative Procedures Act.

F. Applicants may apply for more than one entertainment tax credit program administered by the office and the Department of Economic Development, provided that:

1. separate applications are submitted per program;
2. expenditures shall only qualify for one specified program; and
3. multiple applications shall not result in any duplication of tax credits.

G. A state-certified production which receives tax credits pursuant to the provisions of this Section shall not be eligible to receive the rebates provided for in the Quality Jobs program R.S. 51:2451 through 2461 in connection with the activity for which the tax credits were received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:

§1665. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 47:6022, unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

3D Geometry—electronic media representations, three dimensional representations of geometric data for the purposes of rendering 2D image and performing calculations.

Animated Images—electronic media representation of images that comprise a series of chronological fixed images.

Base Investment—the actual funds expended in Louisiana by a state-certified production as production-related costs for design or development of digital interactive media, including costs for payroll and component parts.

Component Parts—all elements that are integral to the functioning or development of such products and platforms. Some examples may be, but are not limited to; software, computer code, image files, music files, audio files, scripts and plays, concept mock-ups, software tools, and testing procedures. Shall also include, but not be limited to: computer servers, workstations, server racks, hard drives, optical drives, monitors, keyboards, integrated video and audio equipment, networking routers, switches, network cabling, and any other computer-related hardware necessary to create or operate a digital interactive media product or platform.

Department—Department of Economic Development.

Digital Interactive Media—means products or platforms that are:

- a. intended for commercial production, use or distribution;
- b. contain at least two of the following types of data: text, sound, fixed images, video, or 3D geometry; and
- c. that have all of the following three characteristics.

i. *Digital*—a system that uses discrete (discontinuous) values ordinarily symbolized numerically to represent information for input, processing, transmission and storage. A digital system would be contrasted with an analog system which uses a continuous range of values to represent information. The term digital includes, but is not limited to information input, processed, transmitted and stored via the internet.

ii. *Interactive*—a digital media system for inputting, processing, transmitting or storing information or data in which users of the system are able to respond to the digital media system by inputting, transmitting, processing or storing information or data in response to the information or data provided to them through the digital media system. (Digital media system means communication delivered via electronic energy where the information stored, transmitted, or received is in digital form.

iii. *Media*—communication tools used to store, transmit, distribute and deliver information and data. It includes methods and mechanisms for information distribution through, but not limited to distributed networks, such as the Internet, and through compact disc, CD-ROM, various types of DVD, and other removable storage drives and devices.

d. Digital interactive media may include, but not be limited to:

- i. video or interactive games;
- ii simulation software;
- iii interactive educational or training products;
- iv. internet sites designed and developed as social media;
- v. software applications that provide connectivity; and communications between mobile devices and digital interactive media web platforms; and
- vi. technology designed to stream live or pre-recorded video content over the internet to large simultaneous audiences.

e. Digital interactive media shall not include:

- i. software development primarily designed and developed for institutional, private or internal purposes;

- ii. largely static internet sites designed to provide information about a person, business, or firm; or
- iii. products regulated under the Louisiana Gaming Control Law.

Digital Interactive Media Company—an entity organized under the laws of the state of Louisiana and engaged in the business of producing digital interactive media as defined in this section. Digital interactive media company shall not mean or include any company owned, affiliated, or controlled, in whole or in part, by any company or person which is in default on a loan made by the state or a loan guaranteed by the state, nor with any company or person who has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as part of such bankruptcy.

Director—the Director of Digital Media, who is the designee of the secretary of the Department of Economic Development.

Electronic Media—tools used to store, transmit, and receive digitized information that utilizes electronics or electromechanical energy to access the content.

Expended in Louisiana—an expenditure to lease immovable property located within the state; and expenditure as compensation for services performed in the state; or an expenditure to purchase or lease tangible personal property within the state where the transaction is subject to the state sales or lease tax provisions of Title 47 of the Louisiana Revised Statutes of 1950. A transaction that is subject to the state sales or lease tax provisions of Title 47 of the Louisiana revised Statutes of 1950 shall include transactions which are also subject to a statutory exclusion or exemption.

Expenditure—actual payment of cash or cash equivalent for goods or services, as evidenced by an invoice, receipt or other such document.

Fixed Images—electronic media representation in two dimensions that are static.

Indirect Costs—not direct production related costs. Costs of operation that are not directly associated with a specific production, such as clerical salaries and general administrative costs.

Interpersonal Communication Services—websites and other digital media that are primarily for the purposes of exchanging personal or business information, photos or news. Examples of this may be, but are not limited to: those listed in R.S. 47:6022(C)(4), web logs, product websites, social networking websites, video conferencing, internet telephony and instant messaging platforms.

Office—Office of Entertainment Industry Development.

Payroll—includes all salary, wages and other compensation sourced or apportioned to Louisiana, including related benefits,

Person—a natural person, corporation, partnership, limited partnership, limited liability company, joint venture, trust, estate or association.

Production Expenses—preproduction and production expenditures in the state directly relating to a state-certified production;

- a. may include without limitation the following:
 - i. preproduction stage expenses such as design documents, mock-ups and prototypes;

- ii. testing software, source code development, patches, updates, sprites, three-dimensional models and level design:
 - (a). testing software—activities entirely devoted to quality assurance of a product;
 - (b). three-dimensional models—electronic media representations, three dimensional representations of geometric data for the purpose of rendering 2D images and performing calculations.
 - (c). updates—activities directly relating to recalibrating or revising a product;

- iii. costs associated with photography and sound synchronization, lighting and related services;
 - (a). lighting and related services – includes but not limited to, the use of motion capture technology or green screen technology.
- iv. rental of Louisiana facilities and equipment, that are directly related to production;
- v. purchase of prepackaged audio files, video files, photographic, or libraries;
- vi. purchase of license to use pre-recorded audio files, video or photographic files;
- vii. development costs associated with producing audio files and video files to be used in the production of the end product under development;

- b. shall not include the following:
 - i. expenditures made prior to preproduction, such as research and development, workforce recruitment or intellectual property research;
 - ii. postproduction expenditures for marketing and distribution;
 - iii. non-production related overhead;
 - iv. amounts that are later reimbursed by the state or any other governmental agency;
 - v. costs related to the transfer of tax credits;
 - vi. amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the production;
 - vii. the application fee; or
 - viii. state or local taxes.

Resident or Resident of Louisiana—a natural person and, for the purposes of determining eligibility for the tax incentives provided by this section, any person domiciled in the state of Louisiana and any other person who maintains a permanent place of abode within the state and spends in the aggregate more than six months of each year within the state.

Secretary—Secretary of the Department of Economic Development.

State-Certified Production—a digital interactive media production, or a component part thereof, approved by the Office.

Tax Credit—digital interactive media producer tax credit.

Transferee—an individual or entity that receives a transfer of investor tax credits.

Transferor—an individual or entity that makes a transfer of an investor tax credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:

§1667. Certification Procedures

A. Application

1. An application for a state certified production shall be submitted to the director, including:

- a. a distribution plan;
- b. a preliminary budget, including estimated base investment;
- c. a statement that the project will qualify as a state certified production; and
- d. the applicant shall provide additional information upon request.

B. Qualification

1. The office shall determine whether a production or project qualifies, by meeting all requirements of R.S. 47:6022 and these regulations, and taking the following factors into consideration:

- a. the contribution of the production or project to the goal of creating an independent, self-supporting digital interactive media industry;
- b. the impact of the production or project on the employment of Louisiana residents;
- c. the impact of the production or project on the overall economy of the state.

2. Duration of Tax Credits

a. Tax credits may be granted under R.S. 47:6022 until such statute is amended, modified or repealed.

3. Amount of Tax Credits

a. For applications for state-certified productions submitted to the office prior to July 1, 2009 and subsequently approved by the Office and the Secretary, a tax credit shall be earned by producers as follows.

i. The producer shall earn tax credits at the rate of 20 percent of the base investment for the first and second years following certification of the project as a state certified production.

ii. The producer shall earn tax credits at the rate of 15 percent of the base investment for the third and fourth years following certification of the project as a state certified production.

iii. The producer shall earn tax credits at the rate of 10 percent of the base investment for the fifth and sixth years following certification of the project as a state certified production.

iv. No tax credits may be earned after the sixth year following certification of the project as a state certified production.

b. For applications for state-certified productions submitted to the office on or after July 1, 2009 and subsequently approved by the Office and the Secretary, a tax credit shall be earned by a digital interactive media company as follows:

- i. at the rate of 25 percent of the base investment;
- ii. to the extent that base investment is expended on payroll for Louisiana residents employed in connection with a state-certified production, a digital interactive media company shall earn additional tax credits at the rate of 10 percent of payroll.

iii. the initial certification shall be effective for expenditures made prior to the date of initial certification and shall be valid until the production is completed.

(a). Any expenditures made prior to the date of initial certification may qualify for credits;

i. if the producer or digital interactive media company submitted written notice to the office indicating an intent to submit an application at a later date;

ii. if they met the definition of a qualifying expenditure at the time they were made; and

iii. the parties evidence their agreement in the initial certification.

(b) The production shall be considered complete when it receives its first commercial release, or other appropriate benchmark as agreed to between the parties and outlined in the initial certification.

C. Initial Certification

1. After review and upon a determination of qualification, initial certification will be issued by the office and the Secretary, including:

- a. classification of the project as a state certified production;
- b. a unique identifying number;
- c. the total anticipated base investment;
- d. the entity names and allocation percentages for tax credits.

2. Additional information may be requested by the Director in order to make a determination of eligibility for the program.

3. Initial certification shall be issued in the amount determined to be eligible, and shall be sent to each producer or digital media company and to the secretary.

4. Once an initial certification is issued, the applicant or official representative must countersign and return an original to the director, within 30 business days, acknowledging initial certification status.

5. As a condition for receiving certification of tax credits under this Section, state-certified productions may be required to display the state brand or logo, or both, as prescribed by the secretary and as outlined in the initial certification letter.

D. Final Certification and Accounting Requirements

1. Prior to final certification of tax credits of a state-certified production or any portion thereof, the producer or digital interactive media company shall submit to the office:

a. a cost report of production expenditures.

i. The cost report of expenditures shall be subject to an agreed-upon procedures engagement conducted by a certified public accountant in accordance with statements on standards for attestation engagements established by the American Institute of Certified Public Accountants.

ii. The accountant shall issue a report in the form of procedures and findings. The accountant shall be a certified public accountant licensed in the state of Louisiana and shall be an independent third party unrelated to the digital interactive media company.

iii. The agreed upon procedures have been established by the Office and the Secretary, with assistance from the Society of Louisiana Certified Public Accountants, as set forth in Section 1673 of these rules, as promulgated in accordance with the Administrative Procedure Act.

b. any additional information as requested by the Office and/or the secretary, reasonably necessary to determine eligibility for tax credits, including but not limited to a request for an additional audit at the applicants expense.

2. Upon completion of all or a portion of a state-certified production, the office shall review the production expenses and upon a determination of qualification the Office and the Secretary will issue a final tax credit certification letter including:

a. the amount of tax credits;
b. the unique identifying number for the state certified production.

3. Multiple requests for final certification may be submitted.

a. Each submission must be accompanied by a cost report indicating expenditures.

b. Two submissions shall be certified at no additional fee by the Director.

c. Additional charges may apply for three or more certification requests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:

§1669. Application and Transfer of Tax Credits

A. Prior to claiming a tax credit on any tax return, or transferring any tax credit, a person must apply for and obtain final certification.

B. After receiving final certification, a tax credit may be applied as follows:

1. The credit shall be allowed against the income tax due for applications submitted prior to July 1, 2009, and against the income or franchise tax due for applications submitted on or after July 1, 2009. The credit shall be allowed against the income or franchise tax due from a taxpayer for the taxable period in which the credit is earned as well as the immediately preceding period. If the tax credit allowed exceeds the amount of such taxes due from a taxpayer, then any unused credit may be carried forward by the taxpayer as a credit against subsequent tax liability for a period not to exceed 10 years. However, in no event shall the amount of the tax credit applied in a taxable period exceed the amount of such taxes due from the taxpayer for that taxable year.

2. All entities taxed as corporations for Louisiana income tax purposes shall claim any credit allowed under this Section on their corporation income tax return, or in the case of applications submitted after July 1, 2009, their income and franchise tax returns.

3. Individuals shall claim any credit allowed under this section on their individual income tax return.

4. Entities not taxed as corporations shall claim any credits allowed under this Section on the returns of the partners or members as follows:

a. Corporate partners or members shall claim their share of the credit on their corporation income tax returns.

b. Individual partners or members shall claim their share of the credit on their individual income tax returns.

c. Partners or members that are estates or trusts shall claim their share of the credit on their fiduciary income tax returns.

C. After receiving final certification, a tax credit may be transferred as follows.

1. Any tax credits allocated to a person and not previously claimed by any taxpayer against his Louisiana state income or franchise tax may be transferred or sold by

such person to another person, subject to the following conditions.

a. A single transfer may involve one or more transferees.

b. Transferors and transferred shall submit to the office and the Department of Revenue in writing, a notification of any transfer or sale of tax credits within thirty days after the transfer or sale of such tax credits. The notification shall include the transferor's tax credit balance prior to transfer, the state-certified production number, the name of the stat-certified production, the transferor's remaining tax credit balance after transfer, all tax identification numbers for both transferor and transferee, the date of the transfer, the amount transferred, a copy of the tax credit certificate, and any other information required by the office or the Department of Revenue.

c. Failure to comply with this paragraph will result in disallowance of the tax credit until the taxpayers are in full compliance.

d. The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally earned.

e. The transferee shall apply such credits in the same manner and against the same taxes as the taxpayer originally awarded the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:

§1671. Recapture and Recovery of Tax Credits

A. If the office finds that funds for which a digital interactive media company received credits are not actually expended in Louisiana as a production-related cost of a state-certified production, then the digital interactive media company's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this section.

B. Credits previously granted to a taxpayer, but later disallowed, may be recovered by the Secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the credits were earned.

1. The only interest that may be assessed and collected on recovered credits is interest at a rate of three percentage points above the rate provided in R.S. 9:3500 (B) (1), which shall be computed from the original due date of the return on which the credit was taken.

2. The provisions of this Section are in addition to and shall not limit the authority of the Secretary of the Department of Revenue to assess or to collect under any other provision of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:

§1673. Agreed Upon Accounting Procedures

A. The agreed upon accounting procedures shall be available to the public as follows:

1. posted on LouisianaEntertainment.gov;

2. available for viewing during regular business hours in the office;
3. sent to the applicant and incorporated into the initial certification letter; or
4. available upon written request to the Director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6022.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Office of Entertainment Industry Development, LR 36:

Family Impact Statement

The proposed Rule LAC 61:I.Chapter 16. The Louisiana Digital Media Act 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 the children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons should submit written comments on the proposed Rules to Elliott Adams through the close of business on January 4, 2010, at P.O. Box 94185, Baton Rouge, LA 70804-9185 or 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by email to elliott.adams@la.gov or by fax to 225-342-5554. A meeting for the purpose of receiving the presentation of oral comments will be held on January 5, 2010, at 10:00 a.m. at the Department of Economic Development, 1051 North Third St., Baton Rouge, LA 70802.

Kristy Mc Kearn
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Entertainment Industry Tax Credit Programs—Digital Media Act

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

The proposed rules will have no effect on local or state governmental expenditures. These proposed rules will be administered by existing personnel within the Department of Economic Development.

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

Act 454 of the 2009 Regular Session of the Legislature expanded eligibility for the program and adopted a single credit rate of 25%, which is greater than the highest rate under former legislation. The Act also provided for an additional 10% on resident payroll credit. Taken together, these changes increase the state's general fund revenue loss exposure. However, the exact amount of the exposure cannot be determined due to the unpredictable nature of utilization of the program. The new credit will likely result in an additional state liability of as much as \$341,000, which is approximately 60% greater than under the old law. However, to the extent that utilization of the credit increases, so will the amount of the state's exposure.

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

Entities applying for benefits will have to prepare applications, submit an application fee, prepare final reports, and provide an audit of expenditures made in relation to the project. Upon fulfillment of all requirements, applicants will receive a tax credit of 25% of eligible interactive digital media expenditures plus an additional 10 percent for Louisiana payroll expenditures.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition due specifically to this rule as all entities performing digital interactive media production activities are eligible to apply. There may be added employment in the sector due to additional revenue made available through these tax credits.

Kristy Mc Kearn
Undersecretary
0911#067

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Economic Development
Office of Business Development
Office of Entertainment Industries Development**

Sound Recording Production and Infrastructure
Tax Credit Programs (LAC 61:I.1631-1639)

The Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development pursuant to the authority of R.S. 47:6023 and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to adopt the following Rules of the Louisiana Entertainment Industry Tax Credit Programs, specifically the Sound Recording Production and Infrastructure Tax Credit Programs. The purpose of this Rule is to establish program policies and procedures in the administration of the Sound Recording Incentive program which includes a production and infrastructure portion. This Rule is to be effective upon approval by the House of Representatives Ways and Means Committee and the Senate Revenue and Fiscal Affairs Committee.

**Title 61
REVENUE AND TAXATION**

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 16. Louisiana Entertainment Industry Tax Credit Programs

Subchapter C. Louisiana Sound Recording Investor Tax Credit Program

§1631. Purpose and Description of Louisiana Sound Recording Investor Tax Credit Program

A. The purpose of this program is to encourage development in Louisiana of a strong capital and infrastructure base for sound recording productions in order to achieve an independent, self-supporting sound recording industry, and to encourage investments in multiple state-certified sound recording production projects and infrastructure.

B. Approvals and certifications as to whether a project qualifies as a state-certified production as required for Sound

Recording Investor Tax Credits are not to be considered as entitlements for sound recording production companies, and the Louisiana Department of Economic Development shall have the discretion to determine whether or not each particular sound recording or infrastructure project, meets the criteria for such qualification as provided herein.

C. These Rules implement the Louisiana Sound Recording Investor Tax Credit pursuant to R.S. 47:6023. This credit was created by Act 485 (H.B. 631), Laws 2005 and amended by Act 368 (S.B. 70), Laws 2007 of Reg. Sess., effective July 1, 2007.

D. These provisions are in addition to and shall not limit the authority of the Secretary of the Department of Revenue to assess or to collect under any other provision of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1347 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:

§1633. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Base Investment—shall mean the actual investment made and expended in the state by:

a. a state-certified production as production expenditures incurred in this state that are directly used in state-certified production or productions;

b. a person or other legal entity in the development of a state-certified infrastructure project. Infrastructure Expenditures shall include, but are not limited to, expenditures for sound recording infrastructure project development, sound recording production spaces, sound production equipment, facilities, equipment for sound recording companies domiciled within Louisiana, sound processing and recording equipment, land acquisition and closing costs, construction costs, design and professional consulting fees associated with the state-certified infrastructure project, furniture, fixtures, percussion, pianos, keyboards, organs, musical and amplification equipment, and financing costs which shall remain permanently located within Louisiana for the useful life of the object. Infrastructure Expenditures shall not include indirect costs, any amounts that are later reimbursed by a third party, any costs related to the allocation of tax credits, or any amounts that are paid to persons or entities as a result of their participation in profits from the exploitation of the State-certified Infrastructure Project.

Department—the Louisiana Department of Economic Development, or its successor.

Expended in the State—an expenditure to acquire property from a source within the state which is subject to state sales or use tax, or an expenditure as compensation for services performed within the state which is subject to state income tax.

Holder—the holder of a partnership interest, membership interest, or other similar ownership interest on any entity not taxed as a corporation.

Investor—any individual or entity that makes an investment in a state-certified production or infrastructure project.

Secretary—Secretary of the Louisiana Department of Economic Development.

Series—more than one state-certified production being financed, or produced in a 12 month period, by or on behalf of the sound recording company or an affiliate grouped together in such a way that the group meets the minimum in-state spend of \$15,000.

Sound Recording—a recording of music, poetry, or spoken-word performance made in Louisiana, in whole or in part. The term *sound recording* shall not include the audio portions of dialogue or words spoken and recorded as part of television news coverage or athletic events.

Sound Recording Production Company—a company engaged in the business of producing sound recordings as defined in this Section. *Sound recording production company* shall not mean or include any person or company, or any company owned, affiliated, or controlled, in whole or in part, by any company or person, which is in default on a loan made by the state or a loan guaranteed by the state, nor which has ever declared bankruptcy under which an obligation of the company or person to pay or repay public funds or monies was discharged as a part of such bankruptcy.

State-Certified Musical Recording Infrastructure Project—a sound recording capital infrastructure project and base investment related to such project that are approved by the Louisiana Department of Economic Development.

State-Certified Production—a sound recording production or a series of productions occurring over the course of a 12-month period, and costs related to such production or productions that are approved by the Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1347 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:

§1635. Rules of Application

A. The sound recording investor tax credit authorized by R.S. 47:6023(C) may be earned and claimed as follows.

1. Until January 1, 2015, there is authorized a credit against the state income tax for investments made in state-certified productions and state-certified sound recording infrastructure projects, which credit will be earned by investors at the time expenditures are certified by the Louisiana Department of Economic Development according to the total base investment certified for the sound recording production company per calendar year. No credit shall be allowed for any expenditures for which a credit was granted under R.S. 47:6007.

2. For state-certified productions certified on and after July 1, 2007, and state-certified infrastructure projects which have applied on or before August 1, 2009, each investor shall be allowed a tax credit of 25 percent of the base investment made by the investor in excess of \$15,000.

3. An application for initial certification of a project shall be submitted to the Louisiana Department of Economic Development prior to the granting of the credit, and the granting of the credits under this Rule shall be on a first-come, first-served basis based on when the proper cost reports as defined here under RS 47:6023, are submitted to DED for certification of tax credits, which shall be determined by the date of a signed receipt via certified or registered mail, courier, hand or other delivery, or the date on a proof of transmission via facsimile and/or by the DED stamped and staff initialed date. The Secretary of the Department of Economic development shall determine annually the annual aggregate maximum. If the total amount of credits earned for any particular year exceeds the aggregate amount of tax credits allowed for that year, the excess will be treated as having been earned on the first day of the subsequent year.

4. Individuals or entities may earn sound recording investor tax credits pursuant to R.S. 47:6023(C).

5. Any individual or entity shall be allowed to claim the sound recording investor tax credit authorized by R.S. 47:6023:

- a. whether or not any such individual is a Louisiana resident; and
- b. whether or not any such entity is domiciled in Louisiana, organized under Louisiana law, or headquartered in Louisiana.

6. Any applicant applying for the credit shall be required to reimburse the department for any audits required in relation to granting the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:

§1637. Certification

A. Initial Certification of State-Certified Productions

1. To obtain the approval of the department for a "state-certified production" as required by R.S. 47:6023(B)(5) and (6), the sound recording production company that will produce the sound recording production must submit a written request to the department for approval of the production as a "state-certified musical recording infrastructure project" or as a "state-certified production" and setting forth the following facts, when applicable:

- a. working title of the sound recording production for which approval is requested;
- b. name of the requesting production company;
- c. telephone number of requesting production company;
- d. name and telephone number of the requesting production company's contact person;
- e. approximate beginning and ending date of production in Louisiana;
- f. Louisiana office address of requesting production company (if available);
- g. telephone number of requesting production company's Louisiana office address (if available);
- h. estimated total production-related costs of the sound recording production for which approval is requested;

- i. estimated total amount of production-related costs to be expended in Louisiana in connection with the sound recording production for which approval is requested;

- k. estimated total payroll to be paid by the requesting production company to Louisiana residents employed by the requesting production company in connection with the production for which approval is requested.;

- l. facts sufficient to determine each of the following:

- i. that the requesting production company is a sound recording production company as defined by R.S. 47:6023(B)(4);

- m. for "state-certified productions" the application shall also include:

- i. the distribution plan;
- ii. a preliminary budget including estimated Louisiana payroll and estimated base investment;
- iii. a description of the type of sound to be recorded;
- iv. a list of the principal creative elements including performing artist(s) and producer;
- v. the name and address of the recording studio or other location where the recording production will take place;

- vi. a statement that the production will qualify as a state-certified production; and

- vii. estimated start and completion dates;

- n. for "state-certified sound recording infrastructure projects" the application shall also include:

- i. a detailed description of the infrastructure project;
- ii. a preliminary budget;
- iii. a statement that the project meets the definition of a state-certified infrastructure project; and
- iv. estimated start and completion dates;
- v. a business plan for startup sound recording infrastructure companies.

2. The department shall submit its initial certification of a project as an "initial state-certified production" or an "initial state-certified musical recording infrastructure project" to investors and to the Secretary of the Department of Revenue, containing a unique identifying number. The department shall issue their written approval of a project as a "state-certified musical recording infrastructure project" or of a sound recording production as a "state-certified production" within 90 business days after receiving a request with respect to such production that complies with Paragraph 1 of this Section. In the alternative, if the department determines that a request for approval of a project as a "state-certified musical recording infrastructure project" or of a sound recording production as an "initial state-certified production" received from a production company is not in compliance with Paragraph 1 of this Section, then within 45 business days after receiving such request, the department shall request in writing from the requesting production company any information necessary in their determination for such request to comply with Paragraph 1 of this Section. Upon receiving all of the requested additional information in writing from the production company, and if the department determine that

the request for approval with respect to such project or production complies with Paragraph 1 of this Section, the department shall issue to the requesting production company their written approval of the project as a "state-certified musical recording infrastructure project" or of a sound recording production as a "state-certified production."

3. The approval of a project as an "initial state-certified musical recording infrastructure project" or of a sound recording production as an "initial state-certified production" issued by the department pursuant to the above Paragraph 2 of this Section will include the following, as appropriate.

a. For initial state-certified musical recording infrastructure projects:

"Based solely on our examination of the factual representations set forth in your request for state certification of ["Name of Project"] dated [Date of Request] attached hereto as Exhibit A, the Department of Economic Development does hereby certify that ["Name of the Project"] qualifies as of [Date] as a initial state-certified musical recording infrastructure project as such term is defined in Louisiana Revised Statutes 47:6023 B(6).

["Identifying Number"] is hereby assigned to ["Name of Project"] and such number shall constitute such project's identifying number as contemplated by R.S. 47: 6023 E(2)(c)."

b. For initial state-certified sound recording productions:

"Based solely on our examination of the factual representations set forth in your request for state certification of ["Name of Production"] dated [Date of Request] attached hereto as Exhibit A, the undersigned does hereby certify that ["Name of the Production"] qualifies as of [Date] as a initial sound recording state-certified production as such term is defined in Louisiana Revised Statutes 47:6023 B(5).

["Identifying Number"] is hereby assigned to ["Name of Production"] and such number shall constitute such production's identifying number as contemplated by R.S. 47: 6023 E(2)(c)."

B. Any funds expended prior to the department's receipt of the official sound recording application for initial credit, shall not qualify as part of the base investment and will not be certified for tax credits. The Sound Recording application must be in writing on the official form to the department.

C. Certification of Sound Recording Investor Tax Credits

1. Prior to any certification of the state-certified production or infrastructure project, the sound recording production company, in the case of an infrastructure project, shall submit to the department a cost report of production or project expenditures to be prepared and audited by an independent Louisiana certified public accountant. The department shall review such expenditures and shall issue a tax credit certification letter to the investors and the Louisiana Department of Revenue indicating the amount of tax credits certified for the state-certified production or state-certified infrastructure project. The certified public accountant must follow the standards as set out in the CPA Auditing Instructions, which are provided by the Department of Economic Development. This must also be accompanied by the CPA Certification Form, which is provided by the Department of Economic Development.

2. After receiving a written request from an investor and after the meeting of all criteria, the department shall

issue a letter of certification to such investor signed by the secretary reflecting the investor's name, the dollar amount of sound recording investor tax credits earned by the investor pursuant to R.S. 47:6023(C) through the date of such request, the calendar year in which the sound recording investor tax credits were earned by the investor, the state-certified sound recording infrastructure project or the state-certified production with respect to which the investor earned the sound recording investor tax credits, and the identifying number assigned to such state-certified sound recording infrastructure project or state-certified production.

3. The tax credits when issued and upon receipt shall not be transferred to any third party and will be held valid only to the party which was certified by the Department of Economic Development. After certification, the Louisiana Department of Economic Development shall submit the tax credit certification letter to the Department of Revenue on behalf of the investor who earned the sound recording tax credits. The Department of Revenue may require the investor to submit additional information as may be necessary to administer the provisions of this Section. Upon receipt of the tax credit certification letter and any necessary additional information, the secretary of the Department of Revenue shall make payment to the investor in the amount to which he is entitled from the current collections of the taxes collected pursuant to Chapter 1 of Subtitle II of this Title, as amended.

4. Once certification of a project has been granted under the criteria established within this provision and pursuant to 47:6023, the granting of such credit will be based upon a first come, first serve basis of the approved cost report or audit and shall be set for a maximum aggregate amount not to exceed \$3 million. For purposes of this Section the applicant will be considered the investor

5. If the total amount of qualifying credits in any particular year exceeds the aggregate amount of tax credits allowed for that year the excess credits will be treated as having been certified for the first day of the subsequent year.

6. The failure of the department to issue a letter of certification in accordance with this Subpart shall not:

a. void or otherwise affect, in any way, the legality or validity of any allocation of sound recording investor tax credits;

b. prohibit any Louisiana taxpayer from claiming sound recording investor tax credits against its Louisiana income tax liability if the sound recording investor tax credits are otherwise allocated or claimed in accordance with R.S. 47:6023(C) and this Subpart; or

c. result in any recapture, forfeiture or other disallowance of sound recording investor tax credits under R.S. 47:6023(G) or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the Department of Revenue, LR 34:1348 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:

§1639. Credits

A. Application of the Sound Recording Investor Tax Credits

1. Any individual or entity claiming sound recording investor tax credits may apply such sound recording investor tax credits to offset tax liabilities that:

a. accrued during a taxable year of such individual or entity, provided the sound recording investor tax credits were originally earned by an investor during that same taxable year; and

b. accrued during a taxable year of such individual or entity that is within the period for which the sound recording investor tax credits could have otherwise been carried forward by the investor originally earning such sound recording investor tax credits.

2. Any individual or entity claiming sound recording investor tax credits may not apply such sound recording investor tax credits to offset tax liabilities that accrued during a taxable year prior to the taxable year in which the sound recording investor tax credits were originally earned by an investor.

3. Any individual or entity claiming sound recording investor tax credits may claim such sound recording investor tax credits prior to other equally applicable, refundable Louisiana tax credits, and receive a refund of the refundable tax credits that such individual or entity is thereby unable to use.

4. The sound recording investor tax credit can be used to offset penalties and interest on any overdue taxes because although penalties and interest can be collected and accounted for in the same manner as if they were part of the tax in certain circumstances, they are not tax.

B. Recapture of Credits

1. If the Department of Economic Development and the Department of Revenue find that funds for which an investor received credits according to this program are not invested in and expended with respect to a state-certified production within 24 months of the date that such credits are earned, then the investor's state income tax for such taxable period shall be increased by such amount necessary for the recapture of credit provided by this program.

2. Credits previously granted to a taxpayer, but later disallowed, may be recovered by the secretary of the Department of Revenue through any collection remedy authorized by R.S. 47:1561 and initiated within three years from December 31 of the year in which the 24 month investment period specified in the above Paragraph ends.

3. The only interest that may be assessed and collected on recovered credits is interest at a rate three percentage points above the rate provided in Civil Code Article 2924(B)(1), which shall be computed from the original date of the return on which the credit was taken.

C. Brand

1. As a condition for receiving certification of tax credits under this Section, state-certified productions may be required to display the state brand or logo, or both, as prescribed by the secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6023.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, and the

Department of Revenue, LR 34:1350 (July 2008), amended by the Department of Economic Development, Office of Business Development, Office of Entertainment Industry Development, LR 36:

Family Impact Statement

The proposed Rules 61:I.Chapter 16, Subchapter C, Louisiana Sound Recording Investor Tax Credit Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, 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 the children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons should submit written comments on the proposed Rules to Lynn Ourso through the close of business on January 4, 2010 at P.O. Box 94185, Baton Rouge, LA 70804-9185 or 1051 North Third Street, Baton Rouge, Louisiana 70802. Comments may also be submitted by email to ourso@la.gov or by fax to 225-342-5554. A meeting for the purpose of receiving the presentation of oral comments will be held on January 5, 2010 at the Department of Economic Development, 1301 N. Third St., Baton Rouge, LA.

Kristy Mc Kearn
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Sound Recording Production and Infrastructure Tax Credit Programs

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

The proposed rules will have no effect on state or local governmental expenditures. These proposed rules will be administered by existing personnel within the Department of Economic Development.

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

Extension of the program to operate as a rebate instead of a refundable credit is expected to result in the maximum use of the program over the available years. The impact on state revenue collections is an anticipated in state general fund revenue in the amount of the program cap of \$3 million per year beginning in FY 10/11 and ending in FY 14/15.

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

Entities applying for benefits will have to prepare applications, submit an application fee, prepare final reports, and provide an audit of expenditures made in relation to the project. Investors will receive a rebate of 25% of eligible sound recording investment in excess of \$15,000.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition due specifically to this rule as all entities performing sound recording production activities are eligible to apply. There may be added employment in the sector due to additional revenue made available through these tax credits.

Kristy McKearn
Undersecretary
0911#068

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 118—Statewide Assessment Standards and Practices (LAC 107, 1803, 1813, and 1817)

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 118—Statewide Assessment Standards and Practices, containing the state Board of Elementary and Secondary Education (BESE) and the Division of Assessments and Accountability (DAA) test policy rules, guidelines, and procedures for easy access during statewide test administration. The purpose of this project is to provide information and updates regarding Chapter 1, General Provisions, and Chapter 18, End-of-Course Tests (EOCT).

The document will provide new and updated statewide test information and provide easy access to that information. It is necessary to revise the bulletin at this time to incorporate new and edited policy guidelines for the End-Of-Course Tests (EOCT) statewide assessment program.

**Title 28
EDUCATION**

Part CXI. Bulletin 118—Statewide Assessment Standards and Practices

Chapter 1. General Provisions

§107. Assessment Programs

A. - G. ...

H. End-of-Course Tests (EOCT). The EOCT will be administered to high school students enrolled in and/or receiving credit for an EOCT course online beginning fall 2007. The tests, which are criterion-referenced and standards-based, will be phased in over a period of six years to assess student mastery of six high school courses.

I. - N. ...

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 31:1526 (July 2005), amended LR 32:233 (February 2006), LR 33:255 (February 2007), LR 36:

**Chapter 18. End-of-Course Tests
Subchapter B. General Provisions**

§1803. Introduction

A. - G.3. ...

4. Algebra I—Middle School: course code 160380;
5. Applied Algebra: course code 160331.

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 35:214 (February 2009), LR 36:

Subchapter D. Achievement Levels and Performance Standards

§1813. Performance Standards

A. - B.1.Table. ...

2. English II Scaled-Score Ranges

Achievement Level	English II Scaled-Score Ranges
Excellent	739–800
Good	700–738
Fair	668–699
Needs Improvement	600–667

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 35:215 (February 2009), LR 36:

Subchapter E. Achievement Level Descriptors

§1817. EOCT Achievement Level Descriptors

A.Table. ...

B. English II Achievement Level Descriptors

Excellent
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> 1. evenly develop and elaborate ideas in written compositions using specific examples as support; 2. relate written texts to life experiences when writing compositions; 3. select language and ideas to establish tone or voice in written compositions; 4. differentiate formal adverb use from colloquial use; 5. determine effects of complex literary elements and devices; 6. interpret literary images to make inferences about meaning; 7. analyze elements of humor and purposes of rhetorical devices; 8. compare literary elements and devices across texts; 9. synthesize information within and across texts to draw conclusions; and 10. evaluate usefulness, relevance, and objectivity of information resources.
Good
<p>Students at this achievement level generally have exhibited the ability to:</p> <ol style="list-style-type: none"> 1. include a clear central idea and use relevant elaboration in written compositions; 2. use varied vocabulary when writing compositions; 3. use language and ideas selected for impact when writing compositions; 4. recognize errors in verb tense; 5. derive word meanings from roots, prefixes, and suffixes; 6. recognize how an author's word choice relates to tone and purpose; 7. analyze literary devices to identify recurring themes; 8. make inferences about cultural characteristics based on texts; 9. make inferences about character motivation based on passage details; 10. examine a sequence of information to determine meaning; 11. make predictions based on information or details provided; and 12. determine appropriateness of research sources.

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

**RULE TITLE: Bulletin 118—Statewide Assessment
Standards and Practices**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Policy language will be edited and corrected in Chapter 1, General Provisions regarding the number of EOC tests that will be administered to high school students in Louisiana. Chapter 18: End-of-Course Tests (EOCT) is updated to reflect the addition of English II Achievement Level Descriptors (ALDs) for Excellent, Good, Fair, and Needs Improvement; scaled-score ranges for English II; and the addition of Applied Algebra I as an eligible course for EOC testing. The proposed rule change will have no implementation cost 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 at the state or local governmental levels.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
There should be no effect on costs and/or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should be no impact on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#027

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 126—Charter Schools
Renewal Process and Timelines
(LAC 28:CXXXIX.1503)

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 126—Charter Schools* (LAC 28:CXXXIX.1503), Charter Renewal Process and Timeline. The proposed Rule sets minimum academic, financial, and legal/contractual performance measures for the renewal of charter schools authorized by the Board of Elementary and Secondary Education (BESE). The proposed Rule also sets forth a timeline and process for submitting and reviewing charter school renewal applications. As the authorizer of Type 2, 4, and 5 charter schools, BESE promulgates rules and policies governing charter school contract conditions, to include applications, amendments,

Fair
Students at this achievement level generally have exhibited the ability to: <ol style="list-style-type: none"> 1. develop written compositions with evidence of conscious organization; 2. include some relevant information when writing compositions; 3. use language that demonstrates an awareness of audience in written compositions; 4. identify correct use of capitalization, including proper nouns and key words in a title; 5. recognize basic literary elements and devices; 6. summarize information from grade-appropriate texts; 7. extend ideas in texts by making simple inferences and some connection to personal experiences; 8. recognize uses of various basic research sources; and 9. evaluate results of an online search.
Needs Improvement
Students at this achievement level are generally working toward the ability to: <ol style="list-style-type: none"> 1. develop written compositions with evidence of conscious organization; 2. use language that demonstrates an awareness of audience in written compositions; 3. summarize information from grade-appropriate texts; 4. extend ideas in texts by making simple inferences and some connection to personal experiences; and 5. evaluate results of an online search.

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 35:216 (February 2009), LR 36:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

renewals, and revocations. The action is required to set minimum performance standards for renewing charter school contracts when schools are at the end of their current contract terms.

**Title 28
EDUCATION**

Part CXXXIX. Bulletin 126—Charter Schools

Chapter 15. Charter Renewal

§1503. Charter Renewal Process and Timeline

A. The renewal of charter schools based on a compelling record of success is a critical component of charter school accountability. In the final year of its charter, a BESE-authorized charter school seeking renewal must demonstrate its success during the previous charter term and establish goals and objectives for the next charter term. Ultimately, the renewal process offers an opportunity for the school community to reflect on its experiences during its first term, to make a compelling, evidence-based case that it has earned the privilege of an additional charter term, and, if renewed, to build an ambitious plan for the future.

B. Student Performance

1. The Louisiana Charter School Law requires each charter school to make demonstrable improvements in student performance over the term of its charter contract. BESE will rely on data from the state’s assessment and accountability program as objective and verifiable measures of student achievement and school performance. Student performance is the primary indicator of school quality; therefore, BESE will heavily factor each charter school’s student performance data in all renewal decisions.

2. The state’s assessment and accountability program assigns performance labels to all schools based on School Performance Scores. Consistent with the philosophy of rewarding strong performance and providing incentives for schools to strive for continual improvement, the renewal terms for BESE-authorized charter schools will be linked to each school’s performance label (based on the school’s performance on the state assessment in the year prior to the renewal application) in accordance with the table that follows.

**School Performance Labels and
Maximum Charter Renewal Terms**

Performance Label	SPS (SY 2008-09)	Maximum Renewal Term
Academically Unacceptable	Below 60.0	3 years
★	60.0 – 79.9	3 Years
★★	80.0 – 99.9	5 Years
★★★	100.0 – 119.9	10 Years
★★★★	120.0 – 139.9	10 years
★★★★★	140.0 and above	10 years

3. A school will be allowed a maximum of two three-year renewal terms.

4. A charter school in its initial term where fewer than 50 percent of its enrolled grades are testable under state accountability will be eligible for a renewal term of three years.

5. A charter school receiving an academically unacceptable performance label based on performance on the state’s assessment and accountability program based on

year four test data (or the year prior to the submission of a renewal application for subsequent renewals) will not be eligible for renewal, unless one of these conditions are met.

a. A charter school that by contract serves a unique student population where an alternate evaluation tool has been established between the charter operator and the Board may be renewed for a term not to exceed five years;

b. A charter school in its initial term that is AUS, but which met its growth target at the end of year four or which has a Growth Performance Score of 60 or higher may be renewed for a term not to exceed three years;

c. A charter school in its initial term that is AUS, but where fewer than 30 percent of its enrolled grades are testable under state accountability, may be renewed for a term not to exceed three years;

d. If, in the Superintendent’s judgment, the non-renewal of an AUS charter school in its initial charter term would likely require many students to attend lower performing schools, and the Superintendent recommends its renewal, the charter may be renewed for a term not to exceed three years. Prior to recommending such renewal, the Superintendent must demonstrate that efforts to find a new, high-quality operator for the school were unsuccessful.

C. Financial Performance

1. The Charter Operator is required to engage in financial practices, financial reporting, and financial audits to ensure the proper use of public funds and the successful fiscal operation of the charter school. The evaluation financial performance indicator standards shall be measured as follows.

Indicator	Standard
Prior and Current Year Budgets	Both budgets balanced using realistic and responsible assumptions
Annual Financial Report	Timely and sufficient filing
Financial Audit	Unqualified opinion; no major findings
Financial Obligations	All in good standing
Financial Reporting	Timely and sufficient filing of all LDOE-required financial reports
Student Count Audit	No major findings from LDOE audit staff

2. An audit finding shall be considered “Major” if it indicates a deliberate act of wrongdoing, reckless conduct, or causes the loss of confidence in the abilities or integrity of the school or seriously jeopardizes the continued operation of the school.

3. Financial obligations shall include, but not be limited to, pension payments, payroll taxes, insurance coverage, and loan payments and terms.

4. BESE will reduce the renewal term by a year for any charter school otherwise recommended for renewal in any of the following instances, but no term shall be less than three years:

a. a charter school that is not current in all financial reporting at the time of its renewal application or at the time of the department’s renewal recommendation;

b. a charter school that has failed to submit at least half of its required financial reports timely or sufficiently in the 12 months immediately preceding the department’s renewal recommendation to BESE;

c. a charter school with a “major finding” in either student count audit or financial audit in the most recent reporting period; or

d. a charter school projecting a deficit in its most recent year end general fund balance.

5. A charter contract will be non-renewed if the charter has failed to demonstrate over the term of its charter, the fundamental ability to operate a fiscally sound charter school, as evidenced by repeated failure to adhere to the financial standards articulated above

D. Legal and Contract Performance

1. BESE will include a charter school’s compliance with its statutory, regulatory, and contractual obligations and all reporting requirements in its renewal decision. BESE’s evaluation shall be based on, but not limited to, the following indicators.

Indicator	Standard
Special Education and ELL Program	Pursuant to applicable law and regulation and contract provisions
Student Enrollment	Pursuant to applicable law and regulation and contract provisions
Student Discipline	Pursuant to applicable law and regulation and contract provisions
Health and Safety	Pursuant to applicable law and regulation and contract provisions
Governance	Pursuant to applicable law and regulation and contract provisions
Facilities	Pursuant to applicable law and regulation and contract provisions

2. BESE will consider a standard not met if a violation indicates a deliberate act of wrongdoing, reckless conduct, or causes a loss of confidence in the abilities or integrity of the school or seriously jeopardizes the rights of students, safety of students, or the continued operation of the school.

3. BESE will not renew a charter if it has failed to demonstrate over the term of its contract, the fundamental ability to adhere to the legal and contractual performance standards articulated above.

E. Initial Renewal

1. In October of each charter school’s fifth year, the charter operator will be required to submit a request for renewal to BESE in accordance with LDOE guidelines.

2. In January of the charter school’s fifth year, the department 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 year four performance label, the department may recommend one of three actions:

- a. renewal for the maximum term identified in the School Performance Labels and Maximum Charter Renewal Terms table;
- b. renewal for a shorter term (based on deficiencies in financial and/or legal/contract performance); or
- c. non-renewal.

4. A recommendation for non-renewal may also include a recommendation that a new charter provider operate the school.

F. Subsequent Renewal

1. After an initial renewal, charter operators will be required, in October of the final year of their renewal charter contracts, to submit a request for renewal to BESE in accordance with LDOE guidelines.

2. A charter school operating under a renewal contract may request early renewal in any year that its performance label would qualify the school for a longer-term renewal than its current contract provides, based on the School Performance Labels and Maximum Charter Renewal Terms table.

3. In January of the charter school’s final contract year, the department 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 performance label in the year prior to the renewal application, the department may recommend one of the following actions:

- a. renewal for the maximum term identified in the School Performance Labels and Maximum Charter Renewal Terms table;
- b. renewal for a shorter term (based on deficiencies in financial and/or legal/contract performance); or
- c. non-renewal.

5. A recommendation for non-renewal may also include a recommendation that a new charter provider operate the school.

G. Ongoing Evaluation

1. All BESE-authorized charter schools will be subject to regular performance evaluations, which may include reviews of student achievement data, financial performance data, and legal and contractual performance data, as well as formal and informal site visits. During its renewal term, each charter school will be subject to regular site visits and contract review on a schedule established by the Department of Education.

2. A charter school under long-term renewal (five or more years), whose academic performance declines for three consecutive years, will be subject to a formal evaluation and contract review by LDOE. Based on the results of its evaluation, the department may recommend one of the following actions:

- a. the charter school be placed under a Memorandum of Understanding (MOU) that outlines specific recommendations for improving performance; or
- b. revocation.

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 36:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 126—Charter Schools Renewal Process and Timelines**

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

The proposed rule sets minimum academic, financial, and legal/contractual performance measures for the renewal of charter schools authorized by the Board of Elementary and Secondary Education (BESE). The proposed rule also sets forth a timeline and process for submitting and reviewing charter school renewal applications. The proposed rule will have no implementation costs (savings) to state or local governmental units.

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

The proposed rule will have no effect on revenue collections of state or local governmental units.

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

The proposed rule will 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 rule will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#029

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—Administration of Medication
(LAC 28: CXV.1129)

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*: §1129. Administration of Medication. The proposed change is the result of Act 145 of the 2009 Louisiana Legislature, to enact R.S. 17: 436.1 (J) which provides relative to the administration of medication

to public school students and requires public school governing authorities to permit students with certain conditions to self-administer certain medications.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1129. Administration of Medication

A - H. ...

I.1. Notwithstanding any provision of law or any rule, regulation, or policy to the contrary, the governing authority of each public elementary and secondary school shall permit the self-administration of medications by a student with asthma or the use of auto-injectable epinephrine by a student at risk of anaphylaxis, provided that the student's parent or legal guardian provides the school in which the student is enrolled with the following documentation:

a. written authorization for the student to carry and self-administer such prescribed medications.

b. written certification from a licensed medical physician or other authorized prescriber that the student:

i. has asthma or is at risk of having anaphylaxis.

ii. has received instruction in the proper method of self administration of the student's prescribed medications to treat asthma or anaphylaxis

c. written treatment plan from the student's licensed medical physician or authorized prescriber for managing asthma or anaphylactic episodes. The treatment plan must be signed by the student, the student's parent or other legal guardian, and the student's licensed medical physician or other authorized prescriber and shall also contain the following information:

i. the name, purpose, and prescribed dosage of the medications to be self-administered.

ii. the time or times the medications are to be regularly administered and under what additional special circumstances the medications are to be administered.

iii. the length of time for which the medications are prescribed.

d. any other documentation required by the governing authority of the public elementary or secondary school.

2. The documentation required by Paragraph 1 of this Subsection shall be kept on file in the office of the school nurse or other designated school official.

3. The governing authority of the public elementary and secondary school shall inform the parent or other legal guardian of the student in writing that the school and its employees shall incur no liability as a result of any injury sustained by the student from the self-administration of medication used to treat asthma or anaphylaxis. The parent or legal guardian of the student shall sign a statement acknowledging that the school shall incur no liability and that the parent or other legal guardian shall indemnify and hold harmless the school and its employees against any claims that may arise relating to the self-administration of medications used to treat asthma or anaphylaxis.

4. For the purposes of the Subsection:

Auto-Injectable Epinephrine—a medical device for the immediate self-administration of epinephrine by a person at risk for anaphylaxis.

Inhaler—a medical device that delivers a metered dose of medication to alleviate the symptoms of asthma.

5. A student who has been granted permission to self-administer medication pursuant to this Subsection shall be allowed to carry and store with the school nurse or other designated school official an inhaler or auto-injectable epinephrine, or both, at all times.

6. Permission for the self-administration of asthma medications or use of auto-injectable epinephrine by a student shall be effective only for the school year in which permission is granted. Permission for self-administration of asthma medications or the use of auto-injectable epinephrine by a student shall be granted each subsequent school year, provided all of the requirements of this Subsection are fulfilled.

7. Upon obtaining permission to self-administer asthma medication or to use auto-injectable epinephrine pursuant to this Subsection, a student shall be permitted to possess and self-administer such prescribed medication at any time while on school property or while attending a school sponsored activity.

8. A student who uses any medication permitted pursuant to this Subsection in a manner other than prescribed shall be subject to disciplinary action; however, such disciplinary action shall not limit or restrict such student's immediate access to such prescribed medication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436.1; R.S. 17:436.1(J)

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1278 (June 2005), amended LR 35:1476 (August 2009), LR 36:

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.

I. 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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Administration of Medication

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

The proposed change, the result of Act 145 of the 2009 Regular Session of the Legislature, provides relative to the administration of medication to public school students and requires public school governing authorities to permit students with certain conditions to self-administer certain medications.

The proposed policy change will create no costs or savings to local governmental units.

The proposed policy change will create no savings to state government; however, there will be a minimal one-time cost of \$164.00 associated with publication of the policy change in the *Louisiana Register*.

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

The proposed policy change will have no effect on revenue collections at the state or local governmental level.

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

The proposed policy change will result in no cost or economic benefit to persons directly affected or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy change will have no effect on competition or employment.

Beth Scioneaux
Deputy Superintendent
0911#031

H. Gordon Monk
Staff Director
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, 1105)

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 and §1105. Types of Absences. This policy revision increases the amount of time students are required to be present at school to receive grades and clarifies definitions of the types of excused and unexcused absences and extenuating circumstances.

Title 28 EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1103. Compulsory Attendance

A. - F. ...

G. In order to be eligible to receive grades, high school students shall be in attendance a minimum of 30,060

minutes (equivalent to 83.5 six hour school days), per semester or 60,120 minutes (equivalent to 167 six hour school days) a school year for schools not operating on a semester basis. To receive Carnegie credit for a course, students must be present 94 percent of the required time listed in §907. Elementary students shall be in attendance a minimum of 167 days (60,120 minutes) a school year.

G.1. - I. ...

J. The only exception to the attendance regulation shall be the enumerated extenuating circumstances that are verified by the Supervisor of Child Welfare and Attendance. Students shall be temporarily excused from the attendance regulation for the following reasons:

1. extended personal physical or emotional illness in which a student is absent for three or more consecutive school days as verified by a physician or nurse practitioner licensed in the state;

2. extended hospital stay in which a student is absent for three or more consecutive school days as verified by a physician or dentist;

3. extended recuperation from an accident in which a student is absent for three or more consecutive school days as verified by a physician, dentist, or nurse practitioner licensed in the state;

4. extended contagious disease within a family in which a student is absent for three or more consecutive school days as verified by a physician or dentist licensed in the state; or

5. observance of special and recognized holidays of the student's own faith.

K. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:221; R.S. 17:226; 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:

§1105. Types of Absences

A. ...

B. Excused absences are absences of two or fewer consecutive school days incurred due to personal illness or serious illness in the family; see the extenuating circumstances definition in subsection J if the student is absent for three or more consecutive days or for other types of absences in which a student would be allowed to receive grades.

C. ...

D. Unexcused absence—any absence not meeting the requirements set forth in the excused absence and extenuating circumstances definitions, including but not limited to, out of school suspensions and absences due to any job (including agriculture and domestic services, even in their own homes or for their own parents or tutors) unless it is part of an approved instructional program.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 17:226; R.S. 17:235.2; R.S. 17:416.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 31:1274 (June 2005), amended LR 36:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
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)

This policy revision increases the amount of time students are required to be present at school to receive grades and clarifies definitions of the types of excused and unexcused absences and extenuating circumstances. There are no implementation costs or savings to state or local governmental units.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no costs or economic benefits to schools or school districts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#030

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—Non-Complex Health Procedures (LAC 28: CXV.1147)

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*: §1147. Non-Complex Health Procedures. The proposed policy change is based on Act 414 of the 2009 Louisiana Legislature, to amend and reenact R.S. 17:436 (A)(2) and (E) relative to removal of the term "outside tracheostomy" suctioning" from the definition of non-complex health procedures and replace with "tracheostomy suctioning."

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 11. Student Services

§1147. Non-Complex Health Procedures

A. The term "noncomplex health procedure" shall mean a task which is safely performed according to exact directions, with no need to alter the standard procedure, and which yields predictable results. It shall include the following:

1. modified activities of daily living which require special instruction such as toileting/diapering, bowel/bladder training, toilet training, oral/dental hygiene, lifting/positioning, and oral feeding.

2. health maintenance procedures such as postural drainage, percussion, tracheostomy suctioning, and gastrostomy feeding and monitoring of these procedures.

3. screenings such as growth, vital signs, hearing, vision, and scoliosis.

B. No city or parish school board shall require any employee other than a registered nurse, licensed medical physician, or an appropriate licensed health professional to perform noncomplex health procedures until all the following conditions have been met:

1. A registered nurse or a licensed medical physician and, when appropriate, another licensed health professional employed by a city or parish school board, has assessed the health status of the specific child in his specific educational setting and has determined that, according to the legal standards of the respective licensed health professional performing such procedure, the procedure can be safely performed, the results are predictable, and the procedure can be delegated to someone other than a licensed health professional following documented training.

2. The registered nurse or the licensed medical physician and, when appropriate, another licensed health professional shall train, in his or her area of expertise, at least two such employees to perform noncomplex health procedures on the specific child in his educational setting. The employees shall be given not less than four hours of training in the area of noncomplex health procedures.

3.a. Following the training provided for in Paragraph 2, no noncomplex health procedure, except screenings and

activities of daily living such as toileting/diapering, toilet training, oral/dental hygiene, oral feeding, lifting, and positioning may be performed unless prescribed in writing by a physician licensed to practice medicine in the state of Louisiana or an adjacent state.

b. The employee, other than the registered nurse, licensed medical physician, or appropriate licensed health professional shall be required to complete, under the direct supervision or coordination of a registered nurse, a minimum of three satisfactory demonstrations. Upon satisfactory completion of these noncomplex health procedures, the registered nurse, licensed medical physician, or appropriate licensed health professional and the trainee shall sign a standard form indicating that the trainee has attained the prescribed level of competency. A copy of this form shall be kept on file by the school system.

4. Individuals who are required to perform noncomplex health procedures and have been trained according to the provisions of this Section, may not decline to perform such service at the time indicated except as exempted for reasons as noted by the licensed medical physician or registered nurse. The reasons for such exemption shall be documented and certified by the licensed medical physician or a registered nurse within seventy-two hours.

5. Any employee shall have the right to request that another school board employee be present while he or she is performing noncomplex health procedures for a student, to serve as a witness to the procedure. After making such a request, the employee shall not be required to perform noncomplex health procedures without such a witness.

C. For the purposes of this Section, "employee" means any appropriate member of the education staff.

D. Each city and parish school board shall provide the necessary safety equipment, materials, and supplies to each employee who performs noncomplex health procedures as provided in this Section. Such safety equipment, materials, and supplies shall include but shall not be limited to gloves, anti-bacterial soaps and wipes, paper towels, and masks.

E. Notwithstanding any provision of law or any rule, regulation, or policy to the contrary, no employee other than a registered nurse, licensed medical physician, an appropriate licensed health professional, or hired and trained unlicensed nursing personnel or unlicensed assistive personnel as defined by the Louisiana State Board of Nursing shall be required to perform a tracheostomy suctioning procedure on any child in an educational setting. However, nothing in this Section shall prohibit an employee who volunteers to perform such procedure and who complies with the training and demonstration requirements as provided in Paragraphs B.2 and 3 of this Section from being allowed to perform such procedure on a child in an educational setting.

F. For purposes of this Section, "appropriate licensed health professional" shall include a licensed practical nurse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:436(A)(2) and (E).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 36:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741—Louisiana Handbook for School Administrators Non-Complex Health Procedures**

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

The proposed policy change, the result of Act 414 of the 2009 Regular Session of the Legislature, removes the term "outside tracheostomy suctioning" from the definition of non-complex health procedures and replaces it with "tracheostomy suctioning."

The proposed policy change will create no costs or savings to local governmental units.

The proposed policy change will create no savings to state government; however, there will be a minimal one-time cost of \$164.00 associated with publication of the policy change in the *Louisiana Register*.

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

The proposed policy change will have no effect on revenue collections at the state or local governmental level.

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

The proposed policy change will result in no cost or economic benefit to persons directly affected or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy change will have no effect on competition or employment.

Beth Scioneaux
Deputy Superintendent
0911#032

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Education Board of Elementary and Secondary Education

Bulletin 741—Louisiana Handbook for School
Administrators—Science Education
(LAC 28:CXV.2304)

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*, Section 2304, Science Education. This policy provides a procedure to be followed for complaints filed about supplemental materials used in a science classroom under the provisions of the Science Education Act. This policy provides a fair and thorough evaluation of materials in response to a complaint.

Title 28

EDUCATION

Part CXV. Bulletin 741—Louisiana Handbook for School Administrators

Chapter 23. Curriculum and Instruction

§2304. Science Education

A – D.4.c. ...

E. The following procedure shall be followed for complaints filed about supplemental materials used in a science classroom.

1. Any Louisiana citizen may challenge materials used by an LEA by submitting a complaint to the Division of Curriculum Standards of the DOE for consideration by BESE. The complaint should contain the reasons for the challenge and cite evidence to substantiate the challenge. The complaint should be sent to the Director of Curriculum Standards.

2. The DOE will notify the LEA using the supplementary material that the complaint has been filed and will provide the LEA with a copy of the complaint. The DOE will request from the LEA a copy of the supplementary materials in question.

3. The DOE shall have the opportunity to appoint two reviewers of the materials. The challenger, the LEA, and the publisher (if any) shall each have the opportunity to appoint one reviewer of the materials. The DOE will provide the reviewers with copies of the supplementary materials and the complaint. The reviewers should be experts who are capable of determining if the materials are grade-level appropriate, if the materials are scientifically sound and supported by empirical evidence, and if the materials do not promote any religious doctrine, promote discrimination for or against a particular set of religious beliefs, or promote discrimination for or against religion or non-religion.

4. The DOE will determine a time and location for a meeting. The DOE will notify the LEA, the complainant, and the reviewers of the date, time, and location. The LEA and the complainant may bring others with them to the meeting.

5. At the meeting, the LEA and the complainant and/or the representatives of each side will explain their

positions. The reviewers may ask questions. All reviewers will complete a form indicating that the materials do or do not violate each of the following provisions and include explanations for their recommendations.

a. The supplementary materials are grade-level appropriate.

b. The information contained in the supplementary materials are scientifically sound and supported by empirical evidence.

c. The materials shall not promote any religious doctrine, promote discrimination for or against a particular set of religious beliefs, or promote discrimination for or against religion or nonreligion.

6. The DOE will forward the reports of the reviewers to BESE. The DOE may elect to make its own recommendation. The DOE will notify the challenger, the LEA, and the publisher of the date and time when the recommendations will be presented to BESE for consideration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:285.1.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 35:1476 (August 2009), LR 36:

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 or 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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741—Louisiana Handbook for School Administrators—Science Education

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

This policy outlines the procedure for handling complaints filed about supplemental materials used in the science classroom as a result of the Science Education Act. There are no implementation costs or savings to state or local governmental units.

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

There will be no effect on revenue collections of state or local governmental units.

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

There will be no costs or economic benefits to schools or school districts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#033

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—ACT/SAT Scores in
Lieu of PRAXIS I SCORES
(LAC 28:CXXXI.241 and 243)

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*: §241. PRAXIS I SCORES and §243. ACT/SAC Scores in Lieu of PRAXIS I Scores. This revision of the PRAXIS examination policy would allow the new School Leaders Licensure Assessment (1011) to be required for Louisiana licensure in Educational Leadership and replace the discontinued School Leaders Licensure Assessment (1010). Education Leader candidates would be required to earn a passing score of 166 for the Praxis SLLA (1011), effective January 1, 2010. Educational Testing Services (ETS) is discontinuing the current Praxis School Leaders Licensure Assessment (1010). A new edition of the SLLA (1011) will be administered by ETS in the fall 2009.

**Title 28
EDUCATION**

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel**

**Chapter 2. Louisiana Teacher Preparation Program
Subchapter B. Alternate Teacher Preparation Programs**

§241. PRAXIS I SCORES

- A. – D. ...
- E. Administrative Area

Certification Area	Name of Praxis Test	Area Test Score
Principal	Educational Leadership: Administration & Supervision (0410) Prior to 1/1/09	620
Educational Leader – Level 1	School Leaders Licensure Assessment (1010) Effective 7/1/06	168
	School Leaders Licensure Assessment (1011) Effective 1/1/10	166
Educational Leader – Level 3	School Superintendent Assessment (1020) Effective 7/1/06	154

All Praxis scores used for certification must be sent directly from ETS to the State Department of Education electronically, or the original Praxis score report from ETS must be submitted with candidate's application.

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 32:1836 (October 2006), amended LR 33:2355 (November 2007), LR 35:644 (April 2009), LR 36:

§243. ACT/SAT Scores in Lieu of PRAXIS I SCORES

- A. – D. ...
- E. Administrative Areas

Certification Area	Name of Praxis Test	Area Test Score
Principal	Educational Leadership: Administration & Supervision (0410) Prior to 1/1/09	620
Educational Leader – Level 1	School Leaders Licensure Assessment (1010) Effective 7/1/06	168
	School Leaders Licensure Assessment (1011) Effective 1/1/10	166
Educational Leader – Level 3	School Superintendent Assessment (1020) Effective 7/1/06	154

All Praxis scores used for certification must be sent directly from ETS to the State Department of Education electronically, or the original Praxis score report from ETS must be submitted with candidate's application.

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 32:1833 (October 2006).

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 or 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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to: Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards for
State Certification of School Personnel—ACT/SAT
Scores in Lieu of PRAXIS I SCORES**

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

This revision of the PRAXIS examination policy would allow the new School Leaders Licensure Assessment (1011) to be required for Louisiana licensure in Educational Leadership and replace the discontinued School Leaders Licensure Assessment (1010) Education Leader candidates would be required to earn a passing score of 166 for the Praxis SLLA (1011), effective January 1, 2010. 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)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#034

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—Adult Education Instructor
(LAC 28:CXXXI.645)

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*, Section 645, Adult Education Instructor. This revision in policy would allow individuals the option of using three years of successful teaching experience in adult education to waive the practicum course requirement for add-on certification in adult education. In addition, the proposed policy change will require successful completion of the Reading in Adult Education course, along with one additional three hour adult education course for certification. Currently, policy requires candidates to complete a three semester hour practicum course in adult education for certification in this area. Other add-on policies of Bulletin 746 allow waivers of teaching practicums with three years of successful teaching experience in the appropriate area. This change will align the adult education add-on policy with other add-on policies in Bulletin 746.

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 §645. Adult Education Instructor

- A. Eligibility Requirements:
1. valid standard Louisiana teaching certificate; and
 2. one of the following:
 - a. five years of adult education experience prior to implementation of certification requirements (September 1982); or
 - b. 9-12 semester hours, as follows:
 - i. introduction to or foundations of adult education, three semester hours;
 - ii. practicum in adult education, three semester hours or three years of successful teaching experience in adult education;
 - iii. reading instruction in adult education, three semester hours; and
 - iv. three semester hours from the following areas:
 - (a). materials, methods, and/or curricular development in adult education;
 - (b). adult learning and development;
 - (c). use of community resources;
 - (d). administration and supervision of adult education;
 - (e). guidance and counseling in adult education;
 - (f). competency-based adult education;
 - (g). independent study, special problems, or issues in adult education.
- B. ...

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 32:1818 (October 2006), amended LR 36:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746—Louisiana Standards for State Certification of School Personnel Adult Education Instructor

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- This revision in policy would allow individuals the option of using three years of successful teaching experience in adult education to waive the practicum course requirement for add-on certification in adult education. In addition, the proposed policy change will require successful completion of the Reading in Adult Education course, along with one additional three hour adult education course for certification. 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 NON-GOVERNMENTAL GROUPS (Summary)
- There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#037

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
Certification Appeal Process
(LAC 28:CXXXI.801, 803, and 805)

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 (BESE) approved for advertisement revisions to *Bulletin 746—Louisiana Standards for State Certification of School Personnel*, Sections 801, 803, and 805. This revision in policy will allow all the decisions made by the Teacher Certification Appeals Council (TCAC) to be final and that the TCAC will provide a written report of its findings to the Board. These changes will also include clarification that appeals will not be considered for individuals who lack a degree required for certification, examinations required for initial certification, or fifty percent or more of required coursework for certification. Appeals will also be denied to individuals who hold degrees from non-accredited universities or who hold nonstandard teaching certificates. During the 2009 Louisiana Legislative Session, the Legislature approved House Bill No. 183, Act 31, which required BESE to establish an appeals process for applicants who have been denied teacher certification. The proposed revisions to Bulletin 746 will align certification policy with statutory requirements.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 8. Certification Appeal Process

§801. Overview

A. The certification appeal process is available to an individual who has applied for certification and has been denied the requested certification due to the absence of certification requirements. The process provides such an individual the opportunity to have their appeal evaluated by the Teacher Certification Appeals Council (TCAC). TCAC evaluates all appeals and submits a written report of its findings to BESE. The decision of the council is a final decision.

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 32:1829 (October 2006), amended LR 36:

§803. Appeal Process

A. An applicant who is denied certification but who believes that he/she has legitimate grounds for an appeal, may submit a Certification Appeal Application to the Division of Certification, Leadership and Preparation. Only

an individual who has been evaluated and denied certification through the Division of Certification, Leadership, and Preparation is eligible to file an appeal. The following restrictions apply.

1. An appeal cannot be initiated until an applicant has submitted a complete certification application to the Louisiana Department of Education, Division of Certification, Leadership, and Preparation; the application is reviewed by a certification specialist; and the applicant is notified that he/she is denied the requested certification.

2. The certification office must receive an appeal application within 90 days from the date that the certification request was denied.

3. Restrictions on Appeals

a. Appeals will not be considered for a person who:

- i. lacks NTE/Praxis requirements for initial certification;

- ii. lacks a grade point average of 2.50 for initial certification;

- iii. lacks fifty percent or more of courses required for certification; or

- iv. lacks the degree required for certification; or
- v. holds a degree from a non-regionally accredited college or university; or

- vi. holds a non-standard certificate; and

- vii. lacks completion of LaTAAP guidelines for in-state or out-of-state applicants.

b. For those who have participated in any undergraduate teacher education program, reading requirements per 17:7.1.A.(4)(a) of the Louisiana Revised Statutes provide for a prescribed number of semester hours in the teaching of reading, as established in policy by the state Board of Elementary and Secondary Education in accordance with the level of certification to be awarded, such requirement to be in addition to requirements for English courses, and such courses in the teaching of reading to emphasize techniques of teaching reading and the recognition and correction of reading problems of the student. State board policy has set these requirements as follows:

- i. for elementary grades undergraduate programs, nine hours of reading coursework;

- ii. for middle grades undergraduate programs, six hours of reading coursework; or

- iii. for secondary grades undergraduate programs, three hours of reading coursework.

c. For those who have participated in any alternate teacher education program, as provided pursuant to reading requirements per R.S. 17:7.1.A(4)(b) and to rules and regulations adopted by the State Board of Elementary and Secondary Education, the applicant shall be given the option of either completing the same amount of semester hours as required for the teaching of reading for undergraduate program applicants as shown in Subparagraph A.3.c above or in lieu of such semester hour requirements shall possess the reading and literacy competencies identified in scientifically based reading research at the national level and approved by the State Board of Elementary and Secondary Education for the teaching of reading.

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 32:1829 (October 2006), LR 36:

§805. Application Packet

Repealed.

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 32:1829 (October 2006).

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to: Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

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

**RULE TITLE: Bulletin 746—Louisiana Standards for
State Certification of School Personnel**

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

This revision in policy will allow all the decisions made by the Teacher Certification Appeals Council (TCAC) to be final and that the TCAC will provide a written report of its findings to the Board. These changes will also include clarification that appeals will not be considered for individuals who lack a degree required for certification, examinations required for initial certification, or fifty percent or more of required coursework for certification. Appeals will also be denied to individuals who hold degrees from non-accredited universities or who hold nonstandard teaching certificates. 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 NON-GOVERNMENTAL
GROUPS (Summary)**

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

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

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#038

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—PRAXIS I Scores
(LAC 28:CXXXI.241, 243, and 409)

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*: §241, "PRAXIS I SCORES," §243, "ACT/SAC Scores in Lieu of PRAXIS I Scores," and §409, "School Librarian." This revision of the PRAXIS examination policy would allow the transition of the Praxis Library Media Specialist (0310) to the Library Media Specialist (0311) with a passing score of 136. In addition, the Praxis Speech Communications (0220) exam would transition to the Speech Communications (0221) exam with a passing score of 146. These transitions would enable use of the Praxis scale of 100-200 which is used for the majority of the Praxis exams. The effective date of this transition is at the next test administration (9/12/09). Educational Testing Services (ETS) undergoes a periodic review, revision, and regeneration of all assessments offered in the Praxis program. The Library Media Specialist and Speech Communications exams have been changed by ETS from the old NTE scale (250-990) to the new Praxis scale (100-200).

Title 28

EDUCATION

**Part CXXXI. Bulletin 746—Louisiana Standards for
State Certification of School Personnel**

**Chapter 2. Louisiana Teacher Preparation Programs
Subchapter B. Alternate Teacher Preparation Programs
§241. PRAXIS I SCORES**

- A. - B. ...
- C. Certification Areas

1. Grades 6-12 Certification

Grades 6-12 Certification Areas		Score			PLT 7-12
Agriculture	Agriculture (0700) Effective 7/1/05	510	---	---	161
Business	Business Education (0100) Prior to 5/31/04 Effective 6/1/04	540	---	---	161
		570			
English	English Language, Literature, & Composition: Content Knowledge (0041) Pedagogy (0043)	160	---	---	161
		130			
Family & Consumer Sciences (formerly Home Economics)	Family & Consumer Sciences (0120) Prior to 12/31/08 Family & Consumer Sciences (0121) Effective 1/1/09	510	---	---	161
		141			
French	French (0170) Prior to 5/31/04 French: Content Knowledge (0173) Effective 6/1/04	520	---	---	161
		156			
German	German (0180) Prior to 6/30/06 German: Content Knowledge (0181) Effective 7/1/06	500	---	---	161
		151			
Mathematics	Mathematics (0060) Prior to 5/31/04 Mathematics: Content Knowledge (0061) Effective 6/1/04 Effective 6/1/07 Effective 6/1/10	550	---	---	161
		125			
		130			
		135			
School Librarian	Library Media Specialist (0310) Prior to 9/11/09 Library Media Specialist (0311) Effective 9/12/09	560	---	---	---
		136			
Social Studies	Social Studies: Content Knowledge (0081) Interpretation of Materials (0083)	149	---	---	161
		152			
Science Areas					
Biology	Biology & General Science (0030) Prior to 6/30/05 Biology: Content Knowledge (0235) Effective 7/1/05	580	---	---	161
		150			
Chemistry	Chemistry/Physics/General Science (0070) Prior to 6/30/06 Chemistry: Content Knowledge (0245) Effective 7/1/06	530			161
		151			
Earth Science	None Available**				161
Environmental	None Available**				161
General Science	General Science: Content Knowledge (0435) Effective 7/1/05 Biology & General Science (0030) Prior to 6/30/05 or Chemistry/Physics/General Science (0070) Prior to 6/30/06	156	---	---	161
		580			
		530			
Physics	Chemistry/Physics/General Science (0070) Prior to 6/30/06 Physics: Content Knowledge (0265) Effective 7/1/06	530			161
		141			
Spanish	Spanish (0190) Prior to 5/31/04 Spanish: Content Knowledge (0191) Effective 6/1/04	540	---	---	161
		160			
Speech	Speech Communications (0220) Effective 7/1/05 Speech Communications (0221) Effective 9/12/09	575	---	---	161
		146			
Technology Education (formerly Industrial Arts)	Technology Education (0050) Effective 7/1/05	600	---	---	161

C. 2 - E. ...

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 32:1836 (October 2006),

amended LR 33:2355 (November 2007), LR 35:644 (April 2009), LR 36:

§243. ACT/SAT Scores in Lieu of PRAXIS I SCORES

A. - B. ...

C. Certification Areas

1. Grades 6-12 Certification

GRADES 6-12 CERTIFICATION AREAS					
		Score			PLT 7-12
Agriculture	Agriculture (0700) Effective 7/1/05	510	---	---	161
Biology	Biology & General Science (0030) Prior to 6/30/05 Biology: Content Knowledge (0235) Effective 7/1/05	580	---	---	161
		150			
Business	Business Education (0100) Prior to 5/31/04 Effective 6/1/04	540	---	---	161
		570			
Chemistry	Chemistry/Physics/General Science (0070) Prior to 6/30/06 Chemistry: Content Knowledge (0245) Effective 7/1/06	530			161
		151			
English	English Language, Literature, & Composition: Content Knowledge (0041) Pedagogy (0043)	160	---	---	161
		130			
Family & Consumer Sciences (formerly Home Economics)	Family & Consumer Sciences (0120)	510	---	---	161
French	French (0170) Prior to 5/31/04 French: Content Knowledge (0173) Effective 6/1/04	520	---	---	161
		156			
General Science	Biology & General Science (0030) —OR— Chemistry/Physics/General Science (0070) Prior to 6/30/05 General Science: Content Knowledge (0435) Effective 7/1/05	580	---	---	161
		530			
		156			

GRADES 6-12 CERTIFICATION AREAS						
		Score				PLT 7-12
German	German (0180)	500	---	---		161
	German: Content Knowledge (0181) Effective 7/1/06	151				
Mathematics	Mathematics (0060) Prior to 5/31/04	550	---	---		161
	Mathematics: Content Knowledge (0061) Effective 6/1/04	125				
	Effective 6/1/07	130				
	Effective 6/1/10	135				
Physics	Chemistry/Physics/General Science (0070) Prior to 6/30/06	530				161
	Physics: Content Knowledge (0265) Effective 7/1/06	141				
School Librarian	Library Media Specialist (0310) Prior to 9/11/09	560	---	---		---
	Library Media Specialist (0311) Effective 9/12/09	136				
Social Studies	Social Studies: Content Knowledge (0081)	149	---	---		161
	Interpretation of Materials (0083)	152				
Spanish	Spanish (0190) Prior to 5/31/04	540	---	---		161
	Spanish: Content Knowledge (0191) Effective 6/1/04	160				
Speech	Speech Communications (0220) Effective 7/1/05	575	---	---		161
	Speech Communications (0221) Effective 9/12/09	146				
Technology Education (formerly Industrial Arts)	Technology Education (0050) Effective 7/1/05	600	---	---		161
Computer Science Earth Science Environmental Science Journalism Latin Marketing (formerly Distributive Education)	At this time, a content area exam is not required for certification in Louisiana.	---	---	---		161

C.2 - E. ...

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 32:1833 (October 2006), amended LR 36:

§409. School Librarian

A. School Librarian—valid for five years.

1. Eligibility requirements:

- a. master's degree in library science from a regionally accredited institution; and
- b. passing score on Praxis Library Media Specialist examination (#0311).

2. Renewal guidelines:

- a. complete 150 continuing learning units of district-approved and verified professional development over the five year time period during which the certificate is held;
- b. the Louisiana employing authority must request renewal of an Ancillary School Librarian Certificate.

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 32:1808 (October 2006), repromulgated LR 33:1617 (August 2007), amended LR 36:

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 or 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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 746—Louisiana Standards for
State Certification of School Personnel
PRAXIS I Scores**

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

This revision of the PRAXIS examination policy would allow the transition of the Praxis Library Media Specialist (0310) to the Library Media Specialist (0311) with a passing score of 136. In addition, the Praxis Speech Communications (0220) exam would transition to the Speech Communications (0221) exam with a passing score of 146. These transitions would enable use of the Praxis scale of 100-200 which is used for the majority of the Praxis exams. The effective date of this transition is at the next test administration (9/12/09).

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)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#035

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—World Language Certificate (LAC 28:CXXXI.311)

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*: §311, "World Language Certificate (WLC) PK-12—Valid for Six Years and Renewable with CLUs." This revision in policy would allow individuals participating in the Louisiana Department of Education Foreign Associate Teacher Program to be issued a World Language Certificate (WLC) to teach in a world language or an immersion setting in grades PK-12. During the 2009 Louisiana Legislative Session, the Legislature approved House Bill No. 621, Act 43, which required BESE to develop and implement policies relative to the certification of foreign associate teachers. The proposed revision of Bulletin 746 will align certification policy with statutory requirements.

Title 28

EDUCATION

Part CXXXI. Bulletin 746—Louisiana Standards for State Certification of School Personnel

Chapter 3. Teaching Authorizations and Certifications

Subchapter A. Standard Teaching Authorizations

§311. World Language Certificate (WLC) PK-12—Valid for Six Years and Renewable with CLUs

A. This certificate may be issued to a foreign associate teacher who participates in the Louisiana Department of Education (LDE) Foreign Associate Teacher Program, and who teaches world language and/or immersion in grades PK-12.

B. This certificate allows the holder to receive the same benefits as any other regularly certified teacher.

C. Eligibility guidelines:

1. a bachelor's degree in education or equivalent preparation in education from a foreign country. The status of this degree will be determined by the Louisiana Department of Education (LDE). If LDE staff cannot make a degree equivalent determination, the candidate's credentials

must be evaluated by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) or by World Education Services (WES). In the case of an AACRAO or WES evaluation, the determination must be on "safe script" paper and must include a course-by-course evaluation;

2. a teaching certificate in the foreign country for the certification area and/or grade level that the candidate will teach in Louisiana;

3. evidence of two years of successful teaching experience in the country of origin; and

4. a native speaker of the language to be taught.

D. Renewal Guidelines: A teacher holding an FLES/WLC certificate may qualify for a renewal of the certificate by completing 150 continuing learning units (CLUs) of district-approved and verified professional development over the six year time period during which he/she holds the certificate, or during the six year time period immediately preceding the request for renewal. The Louisiana employing authority must request renewal of a FLES/WLC certificate. If the 150 continuing learning units were completed abroad then the request must come from the Division of Curriculum Standards.

E. Professional Certificate—A Professional Level 1 certificate may be issued after successful completion of the PRAXIS I Pre-Professional Skills Test, PRAXIS II content area examination(s), and PRAXIS Principles of Learning and Teaching: K-6, 5-9, or 7-12. The Test of English as a Foreign Language may be used in lieu of the PRAXIS I Pre-Professional Skills for Reading and Writing (TOEFL). For renewal and reinstatement guidelines of a Level 1 certificate see Chapter 3.

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 32:1800 (October 2006), amended LR 33:1618 (August 2007), LR 34:233 (February 2008), LR 35:642 (April 2009), LR 36:

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 or 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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to: Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 746—Louisiana Standards for State Certification of School Personnel World Language Certificate**

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

This revision in policy would allow individuals participating in the Louisiana Department of Education Foreign Associate Teacher Program to be issued a World Language Certificate (WLC) to teach in a world language or an immersion setting in grades PK-12. 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)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
0911#036

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools (LAC 28:XXXI.503 and 507)

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 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools*, Sections 503 and 505. The proposed policy change will permit a child who is at least in the ninth grade and is less than fifteen years of age to participate in the classroom instruction component Driver Education. Current policy did not allow participation unless the child was fifteen years of age before the class began. The proposed policy change to Bulletin 1179 is the result of R.S. 17:270(A) and R.S. 32:402.1(D), which were passed during the 2009 Regular Session of the Legislature.

Title 28 EDUCATION

Part XXXI. Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools Chapter 5. Administrative Policies

§503. Driver Education and Training Program for Children (R.S. 17:270)

A. The State Board of Education and the State Department of Education, in consultation with the Department of Public Safety and Corrections, shall establish and operate a driver education and training program in each parish of this state for children who are fifteen years of age or older. The program shall consist of a course of not less than eight hours of actual driving experience and thirty hours of classroom instruction. A child who is in at least the ninth grade and is within ninety days of their fifteenth birthday may participate in the classroom instruction component of the program. The State Board of Elementary and Secondary Education shall provide written notice to each city, parish, and local school board of the requirements of this Subsection. The aims and purposes of the driver education and training program shall be to educate drivers to be competent and to develop a knowledge of those provisions of the law of this state relating to the operation of motor vehicles, a proper acceptance of personal responsibility in traffic, a true appreciation of the causes, seriousness, and consequences of traffic accidents, and the knowledge, attitudes, habits, and skills necessary for the safe operation of motor vehicle.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(5).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1219 (July 1999), amended LR 35:1488 (August 2009), LR 36:

§507. Driver Education; Required (R.S.32:402.1)

A. - C. ...

D. Except as provided in R.S. 17:270(A), no person under the age of 15 shall be allowed to enroll or participate in any driver education course or driver training program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(5).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:1220 (July 1999), amended LR 35:1488 (August 2009), LR 36:

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.

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., January 9, 2010, to: Nina A. Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Jeanette B. Vosburg
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools

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

The proposed policy change, the result of legislation passed during the 2009 Regular Session, will permit a child who is at least in the ninth grade and is less than fifteen years of age to participate in the classroom instruction component Driver Education. Current policy did not allow participation unless the child was fifteen years of age before the class began.

There are no savings to the state or local governmental units as a result of this policy change.

The proposed policy change will result in an estimated cost of \$164.00 to the state due to expense associated with publication of the proposed policy change in the *Louisiana Register*. There will be no economic impact to local governmental units as a result of the proposed policy change.

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

The proposed policy change will not have any effect on revenue collections at the state or local governmental level.

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

The proposed policy will create no costs or economic benefits to persons directly affected or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed policy change will have no effect on competition or employment.

Beth Scioneaux
Deputy Superintendent
0911#039

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—Intersession
(LAC 28:IV.301, 703, 705, and 803)

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, R.S. 17:3048.1, R.S. 17:3048.5 and R.S. 17:3048.6).

This rulemaking adjusts the requirements to maintain a Taylor Opportunity Program for Students (TOPS) award by allowing hours earned by a student during an intersession immediately following the spring term to be counted toward the minimum of 24 hours required each year to maintain eligibility for a TOPS award.

This rulemaking extends the TOPS deadline for enrolling as first-time, full-time student in an eligible postsecondary institution for certain students separated from active duty in the United States Armed Forces to the semester, excluding summer semesters or sessions, immediately following one year from the date of separation from active duty.

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (SG10111NI)

Title 28 EDUCATION

Part IV. Student Financial Assistance—Higher Education

Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

A. Words and terms not otherwise defined in these rules shall have the meanings ascribed to such words and terms in this Section. Where the masculine is used in these rules, it includes the feminine, and vice versa; where the singular is used, it includes the plural, and vice versa.

Academic Year (College)—through the 2007-2008 *academic year*, the two- and four-year college and university *academic year* begins with the fall term of the award year, includes the winter term, if applicable, and concludes with the completion of the spring term of the award year. Intersessions ending during the *academic year* are included in the *academic year*. The two- and four-year college and university *academic year* does not include summer sessions or intersessions that do not end during the *academic year*.

a. Beginning with the 2008-2009 *academic year* and thereafter, the *academic year* begins with the fall term of the award year, includes the winter term, if applicable, and concludes with the completion of the intersession immediately following the spring term of the award year. Intersessions ending during the *academic year*, including the intersession immediately following the spring term, are included in the *academic year*. The two- and four-year college and university *academic year* does not include summer sessions or other intersessions.

* * *

Intersession—an academic term between regular semesters/terms that provides credit courses to students in an intensive, condensed format.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458 and 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (August 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 26:2752 (December 2000), LR 27:36 (January 2001), LR 27:284 (March 2001), LR 27:1219 (August 2001), LR 27:1840 (November 2001), LR 27:1875

(November 2001), LR 28:45 (January 2002), LR 28:446 (March 2002), LR 28:772 (April 2002), LR 28:2330, 2331 (November 2002), LR 29:555 (April 2003), LR 29:879 (June 2003), LR 30:1159 (June 2004), LR 30:2015 (September 2004), LR 31:36 (January 2005), LR 31:3112 (December 2005), LR 33:86 (January 2007), LR 33:439 (March 2007), LR 33:1339 (July 2007), LR 33:2612 (December 2007), LR 34:234 (February 2008), LR 34:1388 (July 2008), LR 34:1884 (September 2008), LR 35:228 (February 2009), LR 36:

Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

§703. Establishing Eligibility

A.1.a. - A.4.a. ...

b. if the student joins the United States Armed Forces within one year after graduating from an eligible Louisiana or an eligible non-Louisiana high school or from an eligible out of country high school, enroll not later than the semester, excluding summer semesters or sessions, immediately following the 5th anniversary of the date that the student graduated from high school or not later than the semester, excluding summer semesters or sessions, immediately following the one year anniversary of the student's separation from active duty, whichever is earlier; or

c. if the student is eligible under the provisions of §703.A.5.d or e, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date the student completes the home study program, which is deemed to be May 31; or

d. if the student is eligible under the provisions of §703.A.5.d or e, and has joined and is on active duty with the United States Armed Forces within one year of completion of the 12th grade of an approved home study program, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the 5th anniversary of the completion of the approved home study program or not later than the semester, excluding summer semesters or sessions, immediately following the one year anniversary of the student's separation from active duty, whichever is earlier; or

A.4.e. - J.4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:

§705. Maintaining Eligibility

A. - A.5. ...

6. minimum academic progress:

a.i. in an academic undergraduate program at an eligible college or university, by the end of each academic year (college), earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or term in the academic year (college), including any hours earned during an intersession ending during the academic year. These hours shall include remedial course work required by the institution, but shall not include hours earned during qualified summer sessions, summer sessions or intersessions that do not end during the academic year or by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

ii. beginning in the 2008-2009 academic year, in an academic undergraduate program at an eligible college or university, by the end of each academic year (college), earn a total of at least 24 college credit hours as determined by totaling the earned hours reported by the institution for each semester or term in the academic year (college), including any hours earned during an intersession ending during the academic year or immediately following the spring term. These hours shall include remedial course work required by the institution, but shall not include hours earned during qualified summer sessions, summer sessions or intersessions that do not end during the academic year or intersessions that do not immediately follow the spring term or by advanced placement course credits. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; or

A.1.b. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:338 (May 1996), repromulgated LR 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:257 (February 1999), LR 25:656 (April 1999), LR 25:1091 (June 1999), LR 26:67 (January 2000), LR 26:688 (April 2000), LR 26:1996 (September 2000), LR 26:2001 (September 2000), repromulgated LR 27:1853 (November 2001), amended LR 28:447 (March 2002), LR 28:772 (April 2002), LR 28:2332 (November 2002), LR 29:2373 (November 2003), LR 30:781 (April 2004), LR 30:1163 (June 2004), LR 30:2019 (September 2004), LR 31:3115 (December 2005), LR 33:437 (March 2007), LR 34:1390 (July 2008), LR 36:

Chapter 8. TOPS-Tech Award

§803. Establishing Eligibility

A.1.a. - A.4.a. ...

b. if the student joins the United States Armed Forces within one year after graduating from an eligible Louisiana or an eligible non-Louisiana high school or from an eligible out of country high school, enroll not later than the semester, excluding summer semesters or sessions, immediately following the 5th anniversary of the date that the student graduated from high school or not later than the semester, excluding summer semesters or sessions, immediately following the one year anniversary of the student's separation from active duty, whichever is earlier; or

c. if the student is eligible under the provisions of §803.A.5.d, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date the student completed the home study program, which is deemed to be May 31; or

d. if the student is eligible under the provisions of §803.A.5.d and has joined and is on active duty with the United States Armed Forces within one year of the date the student completed the home study program, which is deemed to be May 31, enroll not later than the semester or term, excluding summer semesters or sessions, immediately following the 5th anniversary of the date the student completed the home study program, or not later than the semester, excluding summer semesters or sessions, immediately following the one year anniversary of the student's separation from active duty, whichever is earlier; and

A.5. - B.4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:1904 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:65 and 67 (January 2000), LR 26:1602 (August 2000), LR 26:1997 (September 2000), LR 26:2269 (October 2000), LR 26:2754 (December 2000), LR 27:36 (January 2001), LR 27:1220 (August 2001), repromulgated LR 27:1854 (November 2001), amended LR 28:447 (March 2002), LR 28:773 (April 2002), LR 28:2330 (November 2002), LR 29:554 (April 2003), LR 30:1164 (June 2004), LR 30:2019 (September 2004), LR 31:39 (January 2005), LR 31:3114 (December 2005), LR 33:437 (March 2007), LR 33:2614 (December 2007), LR 35:230 (February 2009), LR 36:

Public Comments

Interested persons may submit written comments on the proposed changes (SG10111NI) until 4:30 p.m., December 10, 2009, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Scholarship/Grant Programs—Intersession

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

The proposed change allows students to count credit hours earned during a spring intersession or its equivalent toward the student's annual TOPS 24 credit hour continuing eligibility requirement. Because of the timing of the proposed change, it is anticipated that the cost increase for the current fiscal year, 2009-2010, will be minimal and no additional funding will be required. For subsequent years, there are factors that make it unlikely that many affected students will take classes during the spring intersession. These include limited course offerings and availability, registration restrictions, student specific limitations and other limiting factors. Based on historical data, it is estimated that the maximum cost increase for the 2010-2011

fiscal year will be \$631,723 and \$1,052,755 for the 2011-2012 fiscal year. Since this change should increase student persistence and graduation rates and thus decrease the time needed for graduation, there will be cost savings that cannot be quantified that will offset the cost increase in the TOPS program.

The rule change will also provide a short extension of the deadline to enroll for military members after separation from active duty. No costs or savings is anticipated due to this change.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

The TOPS program affected by this change enables students to access post-secondary education. The higher level of education or technical training for students will have a positive impact on their earning potential, make them more marketable in the job market, and eligible for higher paying jobs. This will provide Louisiana employers a better-educated workforce and may also attract out-of-state employers to Louisiana by providing additional better paying jobs. This proposed change also has a positive impact on student persistence by giving students the financial means through retention of their TOPS awards to continue their postsecondary education or training and it ensures returning military members have sufficient time to enroll.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

An increase in the number of students attending post-secondary education will result in an increase in the number of educated/trained workers in the state and that will have a positive impact on competition and employment.

George Badge Eldredge
General Counsel
0911#007

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Tuition Trust Authority Office of Student Financial Assistance

START Saving Program—Split Investment
(LAC 28:VI.305, 311, and 315)

The Louisiana Tuition Trust Authority announces its intention to amend its START Saving Program rules (R.S. 17:3091 et seq.).

These Rule changes will authorize account owners to select an investment option for each new deposit and provide guidelines and restrictions for changing investment options when an education savings account has two or more investment options. This Rule change also authorizes account owners with multiple accounts to roll over part of the value of a START account to another START account that has a beneficiary who is a member of the family of the original account's beneficiary.

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972. (ST10112NI)

**Title 28
EDUCATION**

**Part VI. Student Financial Assistance—Higher
Education Savings**

Chapter 3. Education Savings Account

§305. Deposits to Education Savings Accounts

A. - D.2. ...

3. The account owner:

a. shall select one investment option in completing the owner's agreement, and

b. beginning December 1, 2009, may select the same or a different investment option at the time of each deposit.

4. Changing the Investment Option

a. Through 2008, the investment option can be changed only once in any 12-month period.

b. For the 2009 calendar year, the investment option may be changed at any time, but no more than two times.

c. Beginning December 1, 2009, if an education savings account has funds in two or more investment options:

i. each option in the account may be changed to one different option or allowed to remain the same.

ii. all funds in each option changed must be transferred.

iii. funds in one option may not be moved to more than one option.

iv. all changes in investment options must take place in one transaction.

v. whether the funds are moved from one option or all options, the change is considered the one per calendar year investment option change.

d. Beginning the 2010 calendar year and thereafter, the investment option may be changed one time each calendar year.

5. Once a selection is made, all deposits shall be directed to the last investment option selected.

D.6. - E.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:788 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 32:1433 (August 2006), LR 32:2240 (December 2006), LR 36:

**§311. Termination, Refund, and Rollovers of an
Education Savings Account**

A. - H. ...

I. Rollovers

1. Rollovers among Education Savings Accounts of the Same Account Owner

a. Beginning October 1, 2009, an account owner may rollover any part or all of the value of an education savings account to another education savings account if the beneficiary of the account receiving the funds is a member of the family of the beneficiary of the original account.

b. If the current value of an education savings account is transferred, all earnings enhancements and earnings thereon shall be included in the transfer.

2. Rollover to another Qualified Tuition Program

a. An account owner may request a rollover of the current value of the account less earnings enhancements and earnings thereon to another qualified tuition program.

b. Earnings enhancements and the earnings thereon allocated to an education savings account that is rolled over to another qualified tuition program are forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:444 (March 2007), LR 35:236 (February 2009), LR 36:

§315. Miscellaneous Provisions

A. - M.3. ...

N. Effect of a Change in Residency. On the date an account is opened, either the account owner or beneficiary must be a resident of the state of Louisiana (see §301.G); however, if the account owner or beneficiary, or both, temporarily or permanently move to another state after the account is opened, they may continue participation in the program in accordance with the terms of the owner's agreement.

O. - S.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:1274 (July 1998), LR 26:1263 (June 2000), repromulgated LR 26:2267 (October 2000), amended LR 27:1221 (August 2001), LR 27:1884 (November 2001), LR 28:1761 (August 2002), LR 28:2335 (November 2002), LR 29:2038 (October 2003), repromulgated LR 29:2374 (November 2003), amended LR 30:791 (April 2004), LR 30:1472 (July 2004), LR 31:2216 (September 2005), LR 32:1434 (August 2006), LR 32:2240 (December 2006), LR 33:2359 (November 2007), LR 34:1886 (September 2008), LR 36:

Public Comments

Interested persons may submit written comments on the proposed changes (ST10112NI) until 4:30 p.m., December 10, 2009, to Melanie Amrhein, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

**RULE TITLE: START Saving Program
Split Investment**

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

There are no estimated implementation costs or savings to state or local governmental units from the proposed rules.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

The proposed change allows START Account Owners to select an investment option for each new deposit and provides guidelines and restrictions for changing investment options when an education savings account has two or more investment options. In addition, it allows START Account Owners to transfer funds in one START savings account to another START savings account. This gives Account Owners more flexibility in managing their account(s) to build funding to pay for future college education expenses and makes the state's Section 529 savings program more competitive with other Section 529 programs thus encouraging participation in the START Savings Program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment resulting from these measures.

George Badge Eldredge
General Counsel
0911#007

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor

Board of New Orleans and Baton Rouge Steamship Pilot Examiners for the Mississippi River

**General Provisions
(LAC 46:LXX.Chapters 61, 64, 66, and 67)**

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Board of New Orleans and Baton Rouge Steamship Pilot Examiners for the Mississippi River hereby gives notice of intent to promulgate rules and to repeal and reenact its rules. The proposed rules restate existing rules and will be reenacted for the purpose of codification. New rules are in the public's interest and will promote public safety. The new rules provide more stringent educational and licensing requirements for applicants, clarify the standard of conduct for state commissioned NOBRA pilots, establish recency and education requirements for pilots and establishes a Pilot Development Program.

Chapter 61 pertains to the general operation of the board. Chapter 62 pertains to the general qualifications necessary to become an apprentice candidate and the examination of pilots. Chapter 63 outlines standards of conduct, standards of proper and safe pilotage, standards of competency and recency of service, along with continuing education requirements. Chapter 64 establishes procedures for the investigation and enforcement of board rules, together with penalties associated therewith. Chapter 65 outlines the board's drug and alcohol policy together with penalties associated therewith.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXX. River Pilots

**Subpart 3. Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River
Chapter 61. General Provisions**

§6101. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued by the Board of Examiners for New Orleans and Baton Rouge Steamship pilots in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements regarding the general operation of the board.

B. This board is the sole competent pilotage authority statutorily created for the purpose of regulating, supervising and overseeing the body of pilots authorized by R.S. 34:1042, et seq. These rules shall apply to all applicants, apprentice pilots and commissioned pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6102. Definitions

Association or Pilot Association—the New Orleans and Baton Rouge Steamship Pilots Association.

Board of Examiners or Board—the Board of Examiners for New Orleans and Baton Rouge Steamship pilots for the Mississippi River, as designated in R.S. 34:1042.

Examiner(s)—those individuals appointed, as per law, to be members of the Board of Examiners for New Orleans and Baton Rouge Steamship pilots.

Pilot(s)—New Orleans and Baton Rouge Steamship pilot(s), as designated in R.S. 34:1043.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6103. Appointment

A. When there is a need for new examiners, the board shall make recommendations to the governor for replacement(s) to fill any vacancies.

B. When this need arises the board shall recommend only those pilots who have served at least five years as an unrestricted Louisiana state commissioned New Orleans and Baton Rouge steamship pilot.

C. Examiners in the performance of their statutory duties have the exclusive and complete authority to determine their work schedule. Further, examiners shall not suffer any loss

of benefits or compensation while they are performing their duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6104. Expenses

A. The board shall maintain an office and conduct business as is necessary to fulfill its legislative mandate and/or as may be required by these rules.

B. All ordinary and necessary operating and administrative costs and expenses of the board, including, but not limited to, the cost of administrative offices, furniture and fixtures, communications, transportation, office supplies and equipment, publications, travel, examiners' reimbursement, attorney fees, expert fees, costs, expenses of litigation or any other expenses whatsoever incurred by the board while performing its duties shall be provided by the pilots and timely paid through their pilot association.

C. The board shall have the authority to hire administrative staff and any other staff, independent contractors or investigators in order to provide assistance in the implementation of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6105. Rules, Records, Meetings, Application

A. All board rules must be adopted by a majority of the examiners. The board shall maintain records in accordance with R.S. 44:1 et seq., and all other state laws. The board shall file an annual report of investigations, findings, actions and accident data in accordance with state laws. The board shall conduct its meeting in accordance with R.S. 42:4.1 et seq., and any other state laws.

B. The board shall hold quarterly meetings on the call of the president or by a majority of the examiners. The president has the prerogative of calling additional meetings as needed to conduct business upon giving proper notice, as required by law.

C. Any formal action taken by the board shall be by a majority vote when there is a quorum present. A majority of the board constitutes a quorum.

D. These rules shall apply to all New Orleans and Baton Rouge steamship pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6106. Association of Pilots

A. The pilots may form themselves into an association not in conflict with the rules and regulations of the board.

B. The formation of an association incorporated or unincorporated which is for the purpose of providing

pilotage service under the law, including but not limited to R.S. 34:1047, must be submitted to the board for approval.

C. The board hereby recognizes the fact that the New Orleans and Baton Rouge Steamship pilots have formed themselves into a legal registered corporation known as the New Orleans and Baton Rouge Steamship Pilots Association.

D. No pilot association, has any authority to impose or legislate any rules, bylaws or charter provisions affecting the board; further, any attempt to exercise any authority over or affecting the board is a violation of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6107. Duties and Responsibilities of Pilots

A. It is the duty and responsibility of pilots to provide for dispatching services and to maintain continuous communications sufficient to accept requests and dispatch orders for pilotage services 24 hours each day seven days each week.

B. The pilots shall organize themselves and be available for duty and accept pilotage assignments in accordance with a work rotation schedule.

C. Notwithstanding any sections of these Rules, the board reserves the right to compel each and every individual pilot to be available for and accept orders for pilotage assignments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6108. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

Chapter 62. Qualifications and Examination of Pilots

§6201. Statement of Purpose

A. The purposes of these rules and regulations is to establish standards for recommendation by the board to the governor of the State of Louisiana for appointment as a New Orleans and Baton Rouge Steamship pilot, pursuant to R.S. 34:1043.

B. The board is charged by the Louisiana Legislature with the responsibility of promoting the health, safety and welfare of the citizens of the State of Louisiana and maintaining safety of maritime commerce along the Mississippi River. To this end, the board has set the requisite qualifications to become a pilot at a high level. The

combination of education, licensing and experience will foster the type of conscientious pilots who will conduct themselves in a professional manner. It is the sole responsibility of each individual state commissioned pilot to conduct themselves in accordance with the rules and regulations of this board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6202. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued by the board in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements regarding the general qualifications and examination of pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6203. Definitions

A. As used in this Chapter, the following terms, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings:

Accredited Institution of Higher Learning—an institution that is accredited by the Commission of Colleges of the Southern Association of Colleges and Schools, the Louisiana Community and Technical College System, or is part of the Louisiana State University System or one whose credits are honored by any of these systems.

Administrative Procedure Act (APA)—the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

Applicant—any person who has submitted an application to be considered for selection into the Pilot Development Program for New Orleans and Baton Rouge steamship pilots.

Application—the completed written application including all supporting documentation supplied to the board by an applicant who desires to become a New Orleans and Baton Rouge steamship pilot

Apprentice—any person duly selected by the members of NOBRA, but not yet commissioned, who is serving in the Pilot Development Program.

Association or NOBRA—New Orleans and Baton Rouge Steamship Pilot Association.

Board of Examiners or Board—Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, as established in R.S. 34:1041 et seq.

Deputy Pilot—a commissioned pilot in the Pilot Development Program.

NOBRA Pilot—a state commissioned New Orleans and Baton Rouge Steamship Pilot, as designated in R.S. 34:1041, et seq.

Pilot Development Program—a period of training and instruction administered to apprentice and deputy pilots.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2472 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6204. Application

A. Any person wishing to submit an application to enter the Pilot Development Program shall obtain an application from the board. The board's contact information is:

Board of Examiners for New Orleans and Baton Rouge
Steamship Pilots for the Mississippi River
2805 Harvard Avenue, Suite 101
Metairie, Louisiana 70006
Telephone: 1 (504) 887-5797
Facsimile: 1 (504) 887-5799
Website: www.nobraexaminers.louisiana.gov

B. All applications shall be in writing, signed by the applicant and presented to a member of the board by the applicant. All persons wishing to submit an application shall make an appointment with an examiner by contacting the board's office. All applications shall be notarized and be accompanied by satisfactory proof of compliance with all of the board's objective requirements. Upon submission a board member will provide a stamped copy to the applicant indicating the date and time of submission. The board shall reject all deficient applications and provide an applicant written notice of the specific deficiency.

C. It is the responsibility of the applicant to inform the board of any changes in their contact information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6205. General Requirements

A. An applicant must be of good moral character. An applicant shall be required to submit to a background check conducted by the Jefferson Parish Sheriff's office. An applicant shall sign all pertinent authorization forms allowing the board to obtain and verify the authenticity of all documents submitted to the board.

B. An applicant must have been a registered voter of the State of Louisiana for the preceding two consecutive years prior to submitting an application.

C. An applicant shall submit proof of a current satisfactory United States Coast Guard approved physical (Merchant Mariner Physical Examination Report). Upon notification of an impending NOBRA selection of apprentices, the applicant shall submit to a physical examination administered by an Examiner appointed physician specializing in occupational medicine no more than 120 days prior to the selection.

D. An applicant shall submit evidence of satisfactory completion of training programs approved by the board for the following courses of instruction:

1. bridge resource management;
2. basic ship handling (5 day);
3. radar observer;
4. advanced firefighting; and
5. CPR, as approved by the American Red Cross.

E. An applicant shall provide proof they have passed a board approved drug screen test consistent with the board's drug screen policy (See Chapter 65 of the board's rules) within thirty days prior to submission of an application. Additionally, upon notification of a pending NOBRA selection of apprentices, the applicant shall submit proof that they have passed a board approved drug screen test not more than one hundred twenty days prior to the selection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6206. Licenses/Education/Experience

A. In addition to the above, an applicant must submit satisfactory proof of the following licensing, education and experience criteria.

1. An applicant must hold at least a current First Class Pilots License, Any Gross Tons, upon the Lower Mississippi River from Chalmette, Louisiana to Baton Rouge Railroad and Highway Bridge at Baton Rouge, Louisiana, including physical, and, at least, either a Master of Steam or Motor Vessels of not more than 1600 Gross Tons; or Master of Towing Vessels or any higher grade license as determined by the board.

a. Notwithstanding A.1. of this section, an applicant with First Class pilotage from the Lower New Orleans Emergency Anchorage, mile marker 89.6 AHP, to the Port Allen Fore Bay, mile marker 228.5 AHP, shall be eligible for selection into the Pilot Development Program. However, an applicant selected for the Pilot Development Program shall be required to obtain First Class pilotage from mile marker 88.0 AHP to Baton Rouge Railroad and Highway Bridge prior to commissioning.

2. An applicant must hold a Bachelors degree from an accredited institution of higher learning.

NOTE: Should the Association choose to select entrants into the Pilot Development Program prior to January 1, 2012, Applicants who hold at least an associate degree from an accredited institution of higher learning may be presented to the Association for consideration. However, any such applicant(s) selected by the Association must obtain an accredited Bachelors degree prior to the successful completion of the Pilot Development Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6207. Notice of Apprentice Selection

A. At least 120 days prior to an apprentice selection, NOBRA must inform the board, in writing, that a selection will be held and the date of the selection.

B. At 100 days prior to the apprentice selection, the board will advertise the date of the apprentice selection, as well as the deadline for submission of application materials, in at least two periodicals, one of which shall have a circulation of the greater New Orleans area and one of which shall have a circulation of the greater Baton Rouge area. In addition, all relevant dates will be posted on the board's website.

C. At least 75 days prior to the apprentice selection, the board will give notice, via U.S. Mail, to all applicants of the date of the selection and the deadline for submitting documentation in support of their application.

D. The deadline for submitting an application and supporting documentation, shall be 3 p.m., 45 days prior to the apprentice selection.

E. At least 30 days prior to the apprentice selection, the board will forward to NOBRA a list of all qualified candidates and supporting documentation of all candidates who meet the criteria for selection, as enumerated in the board's rules.

F. At the conclusion of a NOBRA apprentice selection, NOBRA shall provide the board, in writing, a list of those candidates selected for admission into the Pilot Development Program as an Apprentice Pilot. The board shall unilaterally determine the maximum number apprentices admitted into the Pilot Development Program at any given time. After receipt of notification from NOBRA, the board will notify the selected applicant via U.S. Mail of the time, date and location of the commencement of the Pilot Development Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6208. Expiration of Applications

A. Following an apprentice selection, all unselected applications on file with the board will be deemed expired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6209. Pilot Development Program

A. The Pilot Development Program is a mandatory program administered by the board for all Association selected applicants wherein each applicant must successfully and satisfactorily perform such duties, receive training and instruction, meet required standards, pass examinations and obtain such licensure as determined by the board. The program will last not less than four calendar years and be comprised of an Apprentice Period and a Deputy Pilot Period. Successful completion of the Program is required prior to the board approving the Deputy Pilot for unrestricted pilot status.

1. The board in its sole discretion shall determine the number of selected applicants admitted into the Pilot Development Program at any given time.

B. Apprentice Period

1. All persons participating in the Pilot Development Program shall successfully complete the apprentice portion of the program designed and administered by the board. The Apprenticeship Period shall last for a period of not less than one calendar year. This Apprentice Period shall include the following:

a. not less than one year of training and instruction prior to commissioning, during which time the apprentice

shall accompany state commissioned pilots in the performance of their duties;

- b. advanced qualification testing;
- c. any necessary license preparation and upgrades;

and

- d. any other industry related professional development that may be relevant and necessary.

C. Deputy Pilot Period

1. The Deputy Pilot Period of the Pilot Development Program shall last for a period of not less than three calendar years. The Deputy Pilot Period shall include the following:

- a. movement of vessels of particular types and sizes and at times under specific conditions set by the board;
- b. training and instruction during which the Deputy Pilot accompanies pilots in the performance of their duties;
- c. advanced qualification testing;
- d. any necessary license preparation and upgrades;
- e. successful completion of licensure and education requirements; and
- f. any other industry related professional development that may be relevant and necessary.

D. Time to Complete the Pilot Development Program

1. The Apprentice Period shall be successfully completed within one calendar year unless the board determines that exceptional conditions apply such as illness, injury or limited availability of a necessary resource. Participants who fail to complete the Apprentice Period within the allotted time shall be released from the Program.

2. The Deputy Pilot Period may last up to four years provided the participant is making acceptable progress as determined by the board.

3. The Deputy Pilot Period may be extended up to one additional year after the initial four years at the discretion of the board. If, after the one year extension period, the Deputy Pilot fails to meet the criteria and standards set by the board, said deputy pilot shall be released from the Pilot Development Program and a recommendation will be made to the governor to have the deputy pilot's state commissioned revoked.

E. Grounds for Release from the Pilot Development Program

1. Any Program participant who fails to meet the criteria and standards set by the board shall be released from the Pilot Development Program and will not be recommended to the governor for commissioning. If, already commissioned, a recommendation will be made to have the deputy pilot's state commission revoked.

2. Grounds for release from the Pilot Development Program include, but are not limited to:

- a. Failure to complete the requirements of any period, stage, segment, license upgrades or educational requirements necessary to progress or complete the program;
- b. Recklessness and/or display of lack of judgment;
- c. Disregard of State rules, laws and regulations;
- d. Disregard of United States Coast Guard rules and regulations;
- e. Lack of fitness for the position and responsibilities of a pilot;
- f. Lack of professional integrity, veracity, ability and/or capability; and
- g. Any violations of standards of conduct as enumerated in section 6307 of the board's Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6210. Examination by the Board of Examiners; Recommendation to Governor

A. In order to be recommended to the governor for commissioning as a pilot, all apprentices must complete an examination to be conducted by the board as a practicum, orally, written or a combination thereof. This examination shall test the apprentice's knowledge of pilotage and demonstrate the apprentice's proficiency and capability to serve as a state commissioned pilot.

B. The board shall certify to the governor for consideration to be commissioned as a New Orleans and Baton Rouge Steamship pilot those apprentices who satisfactorily complete all requirements established by state law and these rules and who successfully complete the examination(s) given by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6211. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

Chapter 63. Standards of Conduct

§6301. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by state commissioned pilots, this board has a strong commitment to the public and maritime industry. The board promulgates these standards of conduct, in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6302. Application

A. The board hereby adopts the following rules and regulations relating to all applicants, apprentices, state commissioned New Orleans and Baton Rouge Steamship pilots or any association comprised thereof pursuant to the provisions of R.S. 34:1041 et seq. Where applicable, any

conflict is to be construed and resolved in the stricter sense. To that end, all current rules and regulations are adopted and incorporated herein in extenso.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6303. Authority

A. As mandated by R.S. 34:1041 et seq., these rules and regulations, are promulgated by the board, in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements for pilot oversight of New Orleans and Baton Rouge Steamship pilots, apprentices and any association comprised thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6304. Definitions

A. As used in this Chapter, the following terms, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

Administrative Procedure Act (APA)—the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

Applicant—person who has submitted an application to be considered for selection into the Pilot Development Program for New Orleans and Baton Rouge Steamship pilot(s).

Application—the completed written application including all supporting documentation supplied to the board by an applicant who desires to become a New Orleans and Baton Rouge Steamship pilot.

Apprentice—any person duly selected by the members of NOBRA, but not yet commissioned, who is serving in the Pilot Development Program.

Association or *NOBRA*—New Orleans and Baton Rouge Steamship Pilot Association.

Board of Examiners or *Board*—Board of Examiners for New Orleans and Baton Rouge Steamship pilots for the Mississippi River, as established in R.S. 34:1041 et seq.

Fit for Duty—A pilot who meets the board's requirements regarding licensure, physical and medical competency, recency, is current with their continuing education requirements and is available to be dispatched for pilotage service.

Pilot—a New Orleans and Baton Rouge Steamship pilot, as designated in R.S. 34:1041 et seq.

Services of a Pilot—any advice or assistance with respect to pilotage by the commissioned pilot, including but not limited to advice concerning weather, channel conditions, or other navigational conditions.

VTC—Vessel Traffic Center, or any other similarly related United States Coast Guard or governmental facility, institution, or program whatsoever.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6305. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6306. Violations of the Policy

A. The board shall take the necessary actions for any violation of its policies, rules and regulations. These actions may include referral of such pilot to the Office of the Governor, if required by law, for reprimand, fine, suspension and/or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6307. Standards of Conduct

A. The board may in its discretion recommend to the Office of the Governor, reprimand, fine, suspension and/or revocation of a pilot or Deputy Pilot, for the following non-exclusive list of particulars:

1. failure to maintain, in good, valid and current standing a United States Coast Guard First Class Pilot License of any gross tons;
2. failure to remain a qualified and registered voter of the State of Louisiana;
3. failure to successfully complete continuing professional education requirements;
4. failure to maintain recency;
5. failure to maintain a current satisfactory United States Coast Guard approved physical (Merchant Mariner Physical Examination Report);
6. conviction of any felony from any jurisdiction whatsoever;
7. any violation of the board's drug and alcohol policy;
8. lack of professional integrity, veracity, ability, capability, or competency;
9. neglect of duty; and
10. any violation of these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6308. Obligation of Pilots

A. Obligation of safe pilotage rest entirely with each and every individual state commissioned pilot. When a pilot offers themselves for any pilotage assignment, such pilot certifies and warrants that they are competent, capable and qualified for such assignment and will perform such assignment in compliance with all applicable standards and duties. Further, each individual pilot who accepts an assignment certifies that they are aware of and comply with each and every rule and regulation of the United States of America and the State of Louisiana regarding pilotage.

B. A pilot who has been ill or injured to the extent that the pilot has been unable to perform pilotage duties for a period of 30 calendar days or longer shall:

1. Notify the board, or arrange for it to be notified as soon as possible, after the 30th day of the disability; and

2. Not resume pilotage duties until the pilot has successfully completed and submitted a merchant mariner physical examination report to the board.

C. Before allowing the pilot to return to duty, the board may require the pilot to:

1. submit to an examination, at the board's expense, by a board selected physician;

2. complete a re-orientation program established by the board; and/or

3. appear before the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6309. Adoption of Navigational Rules

A. Pilots shall use a standard of navigation consistent with that of a prudent pilot in adherence with common local practices.

B. Pilots shall use their own independent judgment when piloting an assigned vessel.

C. The board does not direct or control a pilot in the performance of their duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6310. Recency Requirement

A. The purpose of this rule is to ensure that pilots retain their skills in ship handling and maintain familiarity on the NOBRA route.

B. Other than the president of NOBRA, all pilots shall complete at least 36 turns per year, with at least six turns per calendar quarter.

1. A turn shall be considered a vessel transit of at least 20 miles.

2. Work performed at the VTC shall not be considered as a turn for the purpose of recency. However, a pilot is required to be recent in order to stand watch at the VTC, unless specifically waived by the board for a temporary condition not effecting performance of duty.

3. It is the duty of any pilot who fails to maintain recency to remove themselves from rotation and immediately notify the board.

C. Failure of a pilot to remove themselves from rotation and notify the board shall be deemed a violation of these rules and shall result in an investigation.

D. Before a non-recent pilot is eligible to resume pilotage duty, the pilot shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, a specially designed program to re-orient said pilot to Mississippi River pilotage.

1. Before a non-recent pilot is eligible to resume pilotage duty, the board reserves the right to require the pilot to satisfactorily pass a current United States Coast Guard approved Merchant Mariner Physical Examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6311. Continuing Professional Education

A.1. Every pilot seeking to maintain a pilot's commission must successfully complete the following required courses every five years:

a. A Bridge Resource Management (B.R.M.P.) course or seminar for pilots;

b. An Emergency Ship Handling course or seminar for pilots;

c. A marine technical course or seminar, which includes vessel traffic service training;

d. A course or seminar in marine electronic navigation for pilots;

e. A course or seminar on applicable United States Coast Guard navigation regulations (Rules of the Road); and

f. A course or seminar on marine incident management for pilots.

2. Every pilot must annually and successfully complete twenty-four (24) hours of professional development courses approved by the board. The board may, from time to time, adjust these requirements in order to maintain the highest level of professional competency and pilot safety.

B. All professional education classes and programs shall be approved by the board. The board will maintain a non-exclusive list of approved professional education classes and programs, which may be periodically updated.

C. It is the responsibility of the pilot to attend the necessary professional education classes and to present the board with proof of satisfactory completion.

D. Any pilot who fails to successfully complete the required professional education classes or programs will be removed from duty until the pilot complies with the requirements of this section.

E. The board may, for good cause shown, grant a waiver or extend the time for a pilot to complete the continuing professional education requirement, upon timely application, in writing, by the pilot.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6312. Mandatory Rest Period

A. For the purpose of this rule, a “turn” is the time period from dispatch to the termination of the allotted travel time.

B. All pilots shall have a minimum of six hours rest period between turns.

C. For the purpose of this rule, the “rest period” begins at the termination of the allotted travel time at the completion of one turn and ends at the time of dispatching for the next turn.

D. Notwithstanding Subsection B., the captain of the station and shift pilots shall be exempt from the minimum six hours rest period in between turns. However, in no case shall the captain of the station and shift pilots exceed twelve bridge hours in any 24 hour period.

E. In no event shall any pilot remain in rotation for more than thirty days in a 45 day period.

F. Notwithstanding Subsection B., during a state of declared emergency all pilots shall be exempt from the minimum six hours rest period in between turns. However, in no case shall any pilot exceed twelve bridge hours in any twenty-four hour period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

Chapter 64. Investigations and Enforcement

§6401. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by state commissioned pilots, this board has a strong commitment to the public and maritime industry. In accordance with state law, and in order to further enhance the safety and well being of the citizens of Louisiana, as well as to prevent any imminent peril to public health, safety, and welfare, and to achieve and maintain reliable, safe and efficient pilotage services, the board will maintain and enforce a strict policy of conducting full and complete investigations, and possible subsequent referrals to the office of the governor, of any and all violations of board rules and state and/or federal law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6402. Authority

A. As mandated by R.S. 34:1041, these rules and regulations are issued by the board in accordance with the Administrative Procedure Act under R.S. 49:950 et seq., for the purpose of adopting rules, regulations and requirements for oversight of pilots, apprentices, candidates or any association of pilots comprised thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6403. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid or unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6404. Duty to Report

A. In any case, where a vessel under pilotage shall go aground, or shall collide or allide with any other object, or shall meet with any incident, or be injured or damaged in any way, the pilot shall report the matter as follows:

1. report the incident to the nearest United States Coast Guard Marine Safety Unit by way of the most expeditious means available;

2. report the incident by way of the most expeditious means available to NOBRA and report for mandatory post incident drug and alcohol testing;

a. notify the board of the incident by way of the most expeditious means available;

3. be available for interview by the board and furnish complete details of the incident; and

4. submit a written report to the board as soon as practical, but no later than thirty days following the incident.

B. Any pilot who neglects or refuses to submit a written report to the board as required by these rules may be reported to the governor for possible disciplinary action.

C. Any pilot requested or summoned to testify before the board shall appear in accordance with said request or summons and answer any questions related to or in any way connected with the pilot's service. The pilot has right to legal counsel at this meeting.

D. Upon receipt of any incident by a pilot the board shall conduct an investigation, as per these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6405. Removal from Duty

A. When any examiner has reason to believe that the conduct or actions of a pilot is creating a dangerous or unsafe condition, the examiner may immediately relieve that pilot from duty, without the necessity of formal notice and hearing, in order to protect the interests of the State of Louisiana. However, at the earliest possible time, the board shall conduct an investigation of the pilot's conduct, as per these rules, and conduct any necessary hearings in order to protect the due process and equal protection requirements afforded the pilot by the Louisiana and United States constitutions.

B. When any examiner has reason to believe that a pilot is or may be under the influence of alcohol, drugs or any other stimulant or depressant or is suffering from a medical condition that may effect the pilot's ability to perform their duties, the examiner shall immediately relieve that pilot from pilotage duty, without the necessity of formal notice and hearing, in order to protect the interests of the State of Louisiana. However, at the earliest possible time, the board shall conduct an investigation of the pilot's conduct or condition, as per these Rules, and conduct any necessary hearings in order to protect the due process and equal protection requirements afforded the pilot by the Louisiana and United States constitutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6406. Investigations and Enforcement

A. All incidents and complaints reported to the board shall be referred for investigation.

B. The board shall appoint an investigating officer to conduct a preliminary investigation of the incident and/or complaint and report their findings to the board.

C. Following the preliminary investigation, the board shall determine whether the incident and/or complaint is sufficient to justify further proceedings or may dismiss the matter.

D. If after the preliminary investigation, the board is of the opinion that the incident and/or complaint is sufficient to justify a full investigation, the board shall, if so required by law, notify the office of the governor and request authority from the governor to conduct a full investigation and/or administrative hearing regarding the incident and/or complaint. Following receipt of authority from the governor, if so required by law, the board shall authorize its investigating officer to conduct a full investigation of the incident and/or complaint.

E. Following the full investigation, the investigating officer shall make a report to the board, who, in its exclusive discretion, shall determine whether the incident and/or complaint is sufficient to justify further proceedings or may dismiss the incident and/or complaint.

F. Following the full investigation, if the board is of the opinion that an administrative hearing is required, the board shall give notice to the pilot. Said notice shall be issued pursuant to R.S. 49:955(B) and shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is being held;
3. a reference to the particular sections of the statutes and rules involved; and
4. a short and plain statement of the matters asserted.

G. The board may make informal disposition of any investigation or adjudication/hearing by means of stipulation, agreed settlement, consent order or default. If required by law, approval of such informal disposition must be sought from the Office of the Governor before the informal disposition may be deemed final.

H. Any pilot may be represented in any adjudication/hearing before the board by an attorney at law duly admitted to practice in the State of Louisiana. Following receipt of proper notice of such representation, all further notices, subpoenas or other processes related to the proceedings shall be served on the pilot through designated counsel of record.

I. Any pre-hearing motion shall be referred for decision to the board, who in its discretion, may rule on the motion prior to the hearing date or may defer the matter until the hearing date.

J. All investigations and hearings undertaken as authorized herein above, shall be conducted pursuant to the Administrative Procedure Act, R.S. 49:950 et seq. If any specific provision of this section in any way conflicts with the more general rule of the Administrative Procedure Act, the more specific rule of this section shall govern.

K. Upon request of any party and upon compliance with the requirements of this Section, any board member shall sign and issue subpoenas in the name of the board requiring the attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence at an adjudication hearing.

L. No subpoena shall be issued unless and until the party who wishes to subpoena the witness first deposits with the board a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify before the board only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examination, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witnesses as may be fixed by the board with reference to the value of time employed and the degree of learning or skill required.

M. Unless otherwise requested by the respondent/pilot, adjudication hearings, shall be conducted in open session, unless the respondent/pilot expressly requests that the matter be conducted in executive session, all as per law.

N. At the hearing, opportunity shall be afforded to all parties to present evidence on all issues of fact and argument on all issues of law and policy involved, to call, examine and cross-examine witnesses, and to offer and introduce documentary evidence and exhibits as may be required for full and true disclosure of the facts and disposition of the administrative notice.

O. Unless stipulation is made between the parties, and approved by the board, providing for other means of recordation, all testimony and other proceedings of an adjudication shall be recorded by a certified stenographer who shall be retained by the board to prepare a written transcript of such proceedings. Witness fees (expert or otherwise) and related hearing costs caused by the respondent/pilot shall be their responsibility; in no way whatsoever shall the board be liable for nor responsible for costs or fees incurred by the respondent/pilot.

P. During evidentiary hearing, the board shall rule upon all evidentiary objections and other procedural questions, but may consult in or out of executive session, all as per law. At any such hearing, the board may be assisted by legal counsel, who is independent of the prosecutor and who has

not participated in the investigation or prosecution of the case.

Q. The record in a case of adjudication shall include, but is not limited to:

1. the administrative notice, notice of hearing, respondent's response to the complaint, if any, subpoenas issued in connection with discovery, and all pleadings, motions, and intermediate rulings;
2. evidence received or considered at the hearing;
3. a statement of matters officially noticed except those so obvious that statement of them would serve no useful purpose;
4. offers of proof, objections, and rulings thereon;
5. proposed findings and exceptions, if any;
6. the decision, opinion, report or other disposition of the case made by the board;
7. findings of fact; and
8. conclusions of law.

R.1 In an adjudication hearing, the board may give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. Effect shall be given to the rules of privilege recognized by law. The board may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written or recorded form.

2. All evidence, including records and documents in the possession of the board which the parties desire the board to consider, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

3. Notice may be taken of judicially cognizable facts and generally recognized technical or scientific facts within the board's knowledge. The board's experience, technical competence and knowledge may be utilized in the evaluation of the evidence.

4. Any member of the board's serving as presiding officer in an adjudication hearing shall have the power to and shall administer oaths or affirmations to all witnesses appearing to give testimony, shall regulate the course of the hearing, set the time and place of continued hearings, fix the time for the filing of briefs and other documents, if they are required or requested, and may direct the parties to appear and confer to consider simplification of the issues.

S.1. The final decision of the board in an adjudication proceeding shall be in writing and shall include findings of fact and conclusions of law, and shall be signed by the presiding officer of the hearing panel on behalf and in the name of the board.

2. Upon issuance of a final decision, a copy thereof shall promptly be served upon all parties of record, or upon respondent personally in the absence of counsel, in the same manner of service prescribed with respect to service of administrative notices.

T.1. A decision by the board in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the board pursuant to written motion filed with the board within 10 days from service of the decision on respondent or on its

own motion. A motion for rehearing, reopening, or reconsideration shall be made and served in the form and manner prescribed herein above and shall set forth the grounds upon which such motion is based, as provided herein.

2. The board may grant rehearing, reopening, or reconsideration if it is shown that:

- a. The decision is clearly contrary to the law and the evidence;
- b. The respondent has discovered since the hearing evidence important to the issues which he or she could not have with due diligence obtained before or during the hearing;
- c. Other issues not previously considered ought to be examined in order to properly dispose of the matter; or
- d. There exists other good grounds for further consideration of the issues and the evidence in the public interest.

U. As per law, the board shall have the specific authority to recommend probation, to impose a fine, to recommend reprimand or removal from duty, or to recommend to the governor that the commission of any pilot be suspended or revoked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2478 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6407. Recusal

A. No member of the board shall participate in the investigation of or vote on any matter to which he/she is a party to or in which he/she has a conflict of interest. In such cases, he/she shall automatically be recused from participating in or voting on such matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2479 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

Chapter 65. Drug and Alcohol Policy

§6501. Purpose/Statement of Policy

A. Due to the safety sensitive nature of the duties performed by pilots, the board will maintain and enforce a strict policy of zero tolerance for the use of prohibited drugs and the misuse of alcohol. Prohibited drugs shall not be used, possessed, nor distributed by any pilot, at any time, whether on duty or off duty.

B. To this end, all state commissioned NOBRA pilots shall be subject to drug and alcohol testing as per U.S. DOT rules (49 CFR Part 40) and United States Coast Guard regulations (46 CFR Parts 4, 5 and 16). This testing is federally mandated and all rules for specimen collection, handling, testing, confirmation, reporting and medical review shall be adhered to at all times. Additionally, in order to maintain its policy of zero tolerance, the board hereby establishes an enhanced drug screening program, over and above the federal rules. All pilots, apprentices and applicants shall be subject to this enhanced drug screening program, in addition to any testing required under the federal rules. As outlined below, this enhanced drug screening program shall

consist of screening in the following situations: pre-qualification, random, post accident, reasonable suspicion, return to duty and follow-up.

C. Any violation of this drug and alcohol policy shall be reported to the United States Coast Guard and shall subject the pilot to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1794 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6502. Definitions

A. As used in this chapter:

Administrative Procedure Act (APA)—the Louisiana Administrative Procedure Act under R.S. 49:950 et seq.

Alcoholic Beverage—any fluid, or solid capable of being converted into fluid, suitable for human consumption, which contains ethanol; any substance that may otherwise impair or affect the ability of a pilot to function in any way whatsoever.

Applicant—any person who submits the written application supplied by the board to become a NOBRA pilot.

Application—the written application supplied by the board to an applicant who desires to become a Mississippi River pilot as per law and/or for the New Orleans and Baton Rouge Steamship Pilot Association.

Apprentice—any person duly selected by the members of the NOBRA Association, but not yet commissioned, to serve in the Pilot Development Program, as directed by the board

Association—New Orleans and Baton Rouge Steamship Pilot Association.

Board of Examiners—Board of Examiners for the New Orleans and Baton Rouge Steamship pilots, as established by R.S. 34:1041, et seq.

Applicant—any person enrolled and/or participating in the Pilot Development Program as established by this board; also may be used interchangeably with “pilot.”

NOBRA Pilot or *Pilot*—a commissioned Mississippi River pilot for the territory established in R.S. 34: 1041, et seq.

Drug—any and all controlled dangerous substances as defined in R.S. 40:961(7). Drugs which are illegal under federal, state, or local laws include but are not limited to, marijuana, heroin, hashish, cocaine, hallucinogens, and depressants and stimulants not prescribed for current personal treatment by an accredited or licensed physician.

Prescription Medication—any medication distributed by or with the authorization of a licensed physician, as defined in R.S. 40:961(33).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots LR 28:1794 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6503. Circumstances for Drug Testing

A. Regular and random, unannounced urine and hair drug screening shall be done at a frequency designed to assure the state, shipping clients and the general public that the board is dedicated in its enforcement of a zero tolerance

policy towards prohibited drugs and the abuse of prescription drugs.

B. Additionally, the board reserves the right to require a drug screen whenever the board has reasonable suspicion a pilot is under the influence of a drug. Such screen may be done by any means chosen by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6504. Urine Testing

A. Any pilot involved in an accident or incident while performing his duties as a pilot shall be subject to a urine drug screen test, as required by these rules, U.S. DOT rules and United States Coast Guard regulations. This urine drug screen shall consist of an expanded screening panel designed to detect various illegal drugs, and commonly abused prescription drugs, which are not detected by standard U.S. DOT screens. The expanded panel shall be determined from time to time at the discretion of the board. The results of all drug screens taken pursuant to this paragraph shall become part of the pilot’s permanent personnel file.

B. In addition to these required drug screens, all pilots shall be subject to random urine screening by means of the expanded screening panel. This random urine screen will be at a rate of a minimum of six pilots per month. The board shall design a protocol for the random selection of the pilots to be tested. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6505. Hair Testing

A. Every NOBRA pilot shall submit to a hair drug screen on a bi-annual basis. The timing of the bi-annual hair drug screens for each pilot shall be randomly selected as per a protocol designed by the board. Each pilot shall appear for their hair drug screen when notified to do so by the board. This hair screen is designed to detect various illegal drugs, and commonly abused prescription drugs, which may have been used by a pilot. Failure to timely appear for testing or refusing to provide proper or adequate samples will subject the pilot to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6506. Split Sample/Safety Net Testing

A. Whenever there is a positive test result, that pilot shall be entitled to split sample/referee sample testing or safety net testing through the board’s designated testing facilities.

B. The board shall designate, an authorized testing facility or laboratory.

C. The designated testing facility or laboratory shall ensure and be responsible that all specimen collection and related procedures are properly followed and maintained.

D. The designated testing facility or laboratory shall be responsible for the safeguarding of all specimen collection facilities, equipment and samples collected.

E. Samples shall be taken, witnessed and handled in accordance with all applicable federal guidelines.

F. The designated testing facility or laboratory shall assist in ensuring that the sample will be correctly and properly transferred for testing purposes.

G. The following procedure is hereby established for the testing of a split or referee urine, blood or hair sample.

1. Upon the timely request of a pilot, a urine or blood specimen may be split or divided into approximately equal parts; one being processed for initial laboratory testing for detection of the presence of prohibited drugs or substances therein; the remaining or second part shall be identified as the split or referee sample to be processed for future testing under the following procedures. Failure to timely request the taking of a split or referee sample shall be deemed, classified and designated as a waiver of any and all rights to have a split or referee sample.

2. As to hair, upon notice that a test result has been returned or reported as positive, the pilot shall have twenty-four hours to notify the testing facility that the pilot requests that the referee sample be properly taken and tested. Failure of the pilot to timely notify the testing facility that the referee sample is to be tested shall be deemed classified and designated as a waiver and forfeiture of having the referee sample tested.

3. The split or referee sample may, at the election of the pilot, be tested by an alternate testing facility or laboratory, as pre-approved by the board.

H. All test reports shall be submitted to this board in writing.

I. Reports to this board shall present documentary or demonstrative evidence acceptable in the scientific community and be admissible in court in support of a professional opinion as to the positive findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1795 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6507. Effect of Positive Drug Screen/Disciplinary

Action

A. Any pilot with a prohibited drug detected in his system will have an opportunity to explain any medical condition which may have had an effect on the test result. However, passive inhalation or atmospheric contamination are not acceptable explanations for confirmed positive drug tests.

B. Any positive drug screen shall be reported to the United States Coast Guard and will place the pilot's state commission in jeopardy. Any pilot testing positive for a prohibited drug, or residual thereof, shall be removed from duty, pursuant to the board's rules, pending a hearing pursuant to R.S. 34:1042. Any pilot who presents a positive

drug screen shall be subject to disciplinary action by the board, including the recommendation of revocation or suspension of his commission by the governor, reprimand or treatment/rehabilitation. The proper disciplinary action shall be determined by the board on a case by case basis. Any pilot who is required to undergo evaluation and/or treatment for drug use shall do so at their personal expense. In addition, the evaluation and treatment facility must be pre-approved by the board.

C. Refusing a drug screen, or any attempts at alteration or substitution of samples is considered a violation of the federal rules, as well as this policy. Any pilot who refuses to submit to a drug screen, fails to cooperate fully with the testing procedures, or in any way tries to alter the test results, shall be removed from duty as a pilot pursuant to the board's rules, pending a hearing pursuant to R.S. 34:1042. Furthermore, avoiding the directions of the board after an incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the board .

D. In addition, if the master of a vessel refuses a pilot's services due to the alleged impairment of the pilot, the pilot shall immediately contact a member of the board to receive instructions regarding testing. The pilot shall then immediately proceed to a testing facility selected and pre-designated by the board. Furthermore, avoiding the directions of the board after an incident which mandatorily requires a drug/alcohol screen will be considered a refusal to test and will subject the offending pilot to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with RS. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6508. Prescription Drug Use

A. Every pilot has a duty to ascertain whether a prescription medication, legally prescribed, will impair their ability to safely perform their piloting duties. If, after consultation with their treating physician, a pilot reasonably believes or has been informed or advised that a prescription medication may cause impairment, the pilot shall inform the board and remove themselves from duty until such time that their treating physician, in consultation with a physician specializing in occupational medicine, to be named by the board, certifies that they may return to duty or changes the medication to one which will not impair the pilot.

B. If a drug screen indicates the presence of a prescription drug which may impair a pilot's ability to perform their piloting duties, and the pilot has not voluntarily taken leave, the pilot shall be removed from duty until such time the board, in consultation with a physician specializing in occupational medicine to be named by the board, can determine that the pilot is fit for duty.

AUTHORITY NOTE: Promulgated in accordance with RS. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6509. Alcohol Use

A. No pilot shall consume any alcohol within six hours before, or during, the performance of their piloting duties. Alcohol testing shall be conducted following any incident involving a pilot in the performance of their duties. The board and/or the Board of Directors of NOBRA may also require a pilot to submit to alcohol testing upon reasonable suspicion that a pilot is performing his duties while under the influence of alcohol. Duty, in this case, shall be defined as the time the pilot is dispatched for pilotage services. Testing positive for alcohol while on duty is directly reportable to the board and is not subject to review by a Medical Review Officer. Any pilot who requires medicines, such as cough and cold medications, which may have a small amount of alcohol, should ask their physician or pharmacist to recommend a non-alcoholic medication. While the United States Coast Guard prohibits alcohol use above the level of 0.04 percent BAC, the board reserves the right to take disciplinary action on lower alcohol levels, depending on the facts and circumstances of each particular case.

B. Any positive alcohol test shall be reported to the United States Coast Guard and shall place the pilot’s state commission in jeopardy. Any pilot testing positive for alcohol shall be removed from duty pending a hearing. Any pilot with a positive alcohol test shall be subject to disciplinary action. The proper disciplinary action shall be determined on a case-by-case basis. In addition, the board may require the pilot undergo evaluation and treatment at a facility pre-approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1796 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6510. Confidentiality

A. The results of all positive drug screens and alcohol tests shall be confidential and shall not be disclosed to any entity or person other than:

1. The Governor of Louisiana;
2. The board of Louisiana River Pilot Review and Oversight;
3. The United States Coast Guard; and
4. In the event that the board determines that a hearing is required pursuant to R.S. 34:1042, there shall be no requirement of confidentiality in conducting the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6511. Severability

A. It is understood that any provision and/or requirement herein that is deemed invalid and unenforceable, for any reason whatsoever, may be severed from the whole and that the remaining provisions and/or requirements shall be deemed valid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797

(August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6512. Applicable Procedures

A. Any investigation, action or disciplinary proceeding undertaken in conjunction with this policy shall be conducted in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041.

HISTORICAL NOTE: Promulgated by the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 28:1797 (August 2002), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

Chapter 66. Standards of Conduct

§6601. Purpose/Statement of Policy

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6603. Application

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6607. Authority

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6609. Definitions

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6611. Severability

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6615. Violations of the Policy

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge

Steamship Pilots, LR 30:2476 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6617. Standards of Conduct for Proper and Safe

Pilotage

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6623. Absolute Insurer

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6625. Adoption of Navigational Rules

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6627. Duty of a Pilot

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6629. Pilot's Duty to Remain on Duty at the Vessel

Traffic Center (VTC)

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6647. Recency Requirement

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6649. Re-Orientation Period

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), repealed by the

Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6651. Continuing Professional Education

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6653. Mandatory Rest Period

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 31:56 (January 2005), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

Chapter 67. Investigations and Enforcement

§6701. Purpose/Statement of Policy

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6703. Authority

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6705. Severability

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6707. Duty to Report

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6709. Removal from Duty

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2477 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6711. Investigations and Enforcement

Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2478 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

§6713. Recusal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2479 (November 2004), repealed by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:

Family Impact Statement

The proposed rules of the Board of New Orleans - Baton Rouge Steamship Pilot Examiners for the Mississippi River 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. The implementation of these amended rules will have 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 budgets;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform this function.

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

All interested persons are invited to submit written comments on the proposed regulations. Such comments must be in writing and received no later than December 10, 2009 at 4:30 p.m. and should be sent to Captain Christopher R. Brown, President of the Board of New Orleans - Baton Rouge Steamship Pilot Examiners for the Mississippi River, 2805 Harvard Avenue, Suite 101, Metairie, Louisiana 70006.

A public hearing will be held on December 30, 2009, at the East Bank Regional Library, 4747 West Napoleon Avenue, Metairie, Louisiana 70001 at 9:30 a.m. Persons wishing to speak at the hearing must submit a written comment. The proposed regulations are available for inspection at the Office of the State Register website: <http://www.doa.state.la.us/osr/osr.htm>.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: General Provisions

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

There is no cost to the Board of Examiners or the State of Louisiana associated with the promulgation of these rules. All expenses, if any, are paid by the New Orleans-Baton Rouge Steamship Pilot Association (NOBRA) as per law.

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

There is no effect on revenue collection of the state or local governmental units.

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

Current pilots will be subjected to additional cost of attending classes to comply with the continuing education requirements. Additionally, applicants will be subjected to additional education costs to meet the increased minimum education requirements for application.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Under these rules, applicants for a state pilot commission will be subjected to more stringent educational and licensing requirements. This may affect the ability of certain applicants to receive a state pilot commission. These increased requirements will produce a more experienced and qualified state commissioned pilot. Further, these rules clarify the standard of conduct of state commissioned NOBRA pilots. Those who violate these rules may have their state commission affected due to the disciplinary action taken by the Board of Examiners or the governor.

Christopher R. Brown
President
0911#045

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Office of Financial Institutions

Expired License Reinstatement Procedure (LAC 10:XII.301)

In accordance with R.S. 49:950, et seq., of the Administrative Procedure Act, the Commissioner of the Office of Financial Institutions has approved for advertisement the repeal of Louisiana Administrative Code, LAC 10:XII.301, regarding the reinstatement of licenses issued pursuant to the Residential Mortgage Lending Act. This action is being effectuated because the statute pertaining to reinstatement of said licenses has been amended. Thus the Rule is rendered obsolete and no longer necessary.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES AND UCC

Part XII. Residential Mortgage Lending Act

Chapter 3. Residential Mortgage Lending Licenses

§301. Expired License Reinstatement Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 6:121 and 6:1085.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 31:2893 (November 2005), amended LR 34:2563 (December 2008), repealed LR 36:

Family Impact Statement

The proposed amendments should not have any known or foreseeable impact on any family as defined by R.S. 49:972 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;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons may submit comments until 4:30 p.m., December 20, 2009, to Susan Rouprich, General Counsel, P.O. Box 94095, Baton Rouge, LA 70804-9095 or by hand delivery to 8660 United Plaza Blvd, 2nd Floor, Baton Rouge, La. 70809.

John Ducrest, CPA
Commissioner

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

**RULE TITLE: Expired License
Reinstatement Procedure**

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

In order to accommodate the utilization of the online Nationwide Mortgage Licensing System & Registry for the Office of Financial Institutions to license residential mortgage lenders, brokers and originators, new deadlines and late renewal periods were enacted in Act 522 of 2009. As a result there is no longer a statutory provision for reinstatement of a license. The proposed Rule simply repeals the guidelines and procedures for submitting a reinstatement request to the Commissioner of Financial Institutions. The proposed Rule will have no implementation costs or savings to the State of Louisiana or local government units.

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

The proposed Rule change will have no materials effect on revenue collections for the state of Louisiana or any other governmental unit. All applicants which file after December 31st but before the last day of February will pay the appropriate late fees. Reinstatement fees that were previously assessed for applications received during this period were minimal and in large part were determined by how much the licensee would have paid in license application late renewal fees. It is anticipated that the proposed rule will result in a reduction in fees classified as reinstatement fees and a like amount of increase in late renewal fees.

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

Implementation of this Rule change will have no cost or economic benefit to residential mortgage licensees

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

The proposed Rule change is not expected to have any impact on competition and employment in the public or private sector.

John Ducrest, CPA
Commissioner
0911#070

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Veterinary Medicine**

Continuing Veterinary Medicine Education
(LAC 46:LXXXV.403, 409, 413, 811, and 1227)

The Board of Veterinary Medicine proposes to amend and adopt LAC 46:LXXXV.403, 409, 413, 811, and 1227 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518A(9). The proposed Rules are being amended and adopted to address the requirements and program approval of continuing veterinary medicine education for annual renewal of veterinary medicine license, registered veterinary technician certification, and animal euthanasia technician certification in order to maintain and improve professional competencies for the health, welfare, and safety of the citizens and animals of Louisiana. The proposed amended and adopted Rules allow one-half of the required continuing education credits to be taken as compendium/self-help and online continuing education courses with third party grading; continuing education for annual renewal for registered veterinary technicians, and in-house continuing education programs for veterinarians. Upon promulgation, the proposed Rules are intended to become effective for the period of time (July 1, 2010-June 30, 2011) for the 2011-2012 annual license and certification renewal and every annual license and certification renewal period thereafter. The proposed Rules have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

The Notice of Intent of the proposed Rules was first published in the Louisiana Register on May 20, 2009, however, due to written comments received, the board elected to make substantive changes. First, the requirement of "Board Certified specialist" as the presenter for in-house continuing education has been deleted from §409.A.4 in the original Notice of Intent. Second, due to the deletion above, the effective date will now be for the period of time (July 1, 2010-June 30, 2011) for the 2011-2012 annual license and certification renewal and ever annual license and certification renewal period thereafter. The appropriate state

officials and persons providing comments have been notified of the changes and the board's decision.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXV. Veterinarians

Chapter 4. Continuing Veterinary Education

§403. Continuing Veterinary Education Requirements

A. A minimum of twenty actual hours is required each fiscal year (July 1 through June 30) as a prerequisite for annual renewal of a license. Hours may be taken from:

1. ...
2. a maximum of 10 hours of credit may be obtained in approved video taped, self-test programs with third party grading, and/or self-help instruction, including online instruction with third party grading;
3. the 20-hour requirement for annual renewal of a license may be taken in any combination of the following board-approved programs regarding subject matter content: clinical, alternative, regulatory, practice management, and/or research; however, the actual mediums of approved video taped, self-test programs with third party grading, and/or self-help instruction, including online instruction with third party grading, are limited to the 10-hour maximum set forth in §403.A.2.

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated as §405 by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March 1990), amended LR 19:1427 (November 1993), LR 23:1147 (September 1997), LR 28:1208 (June 2002), LR 33:649 (April 2007), repromulgated LR 33:847 (May 2007), amended LR 36:

§409. Approved Continuing Education Programs

A. - A.3. ...

4. an in-house continuing education program may be approved by the board if such program's subject matter content complies with the board's rules, and the program is open by invitation/advertisement to interested veterinarians in general who are not associated with the in-house practice at issue at least ten calendar days prior to the commencement of the program. The general requirements regarding continuing education, including timely submission for pre-approval of the program by the board, continues to apply.

5. In order to qualify for board approval, all continuing education programs must be open by invitation/advertisement to interested veterinarians in general.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:224 (March 1990), amended LR 19:1428 (November 1993), LR 33:649 (April 2007), repromulgated LR 33:848 (May 2007), amended LR 36:

§413. Non-Compliance

A - D. ...

E. The promulgation of Rule amendments by the board published in the *Louisiana Register* on November 20, 2009 shall become effective for the period of time (July 1, 2010 - June 30, 2011) for the 2011-2012 annual license renewal and every annual license renewal period thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:225 (March 1990), amended LR 19:1428 (November 1993), LR 33:649 (April 2007), repromulgated LR 33:848 (May 2007), amended LR 36:

Chapter 8. Registered Veterinary Technicians

§811. Certificate Renewal, Late Charge, Continuing Education

A - C ...

D. Continuing Education Requirements

1. A minimum of ten continuing education units is required each fiscal year (July 1 through June 30) as a prerequisite for renewal of certification. An RVT who fails to obtain a minimum of ten continuing education units within the applicable fiscal period will not meet the requirements for renewal of his certificate.

2. All continuing education programs must be approved by the board prior to attendance with the subject matter content properly addressing the clinical practice of a registered veterinary technician. Those continuing education programs not timely submitted in accordance with Subsection F below will not be allowed for annual continuing education credit.

3. Proof of attendance, which shall include the name of the course, date(s) of attendance, hours attended, and specific subjects attended, shall be attached to the annual renewal form. Proof of attendance must include verification from the entity providing or sponsoring the educational program. However, the actual mediums of video taped, self-test programs with third party grading, and/or self-help instruction, including online instruction with third party grading, are limited to five hours per fiscal period (July 1 through June 30). The requirement of timely pre-approval of the program by the board shall apply.

4. All hours shall be obtained for the applicable fiscal year (July 1 through June 30) preceding the renewal period of the certificate.

5. Each RVT must fulfill his annual educational requirements at his own expense or through a sponsoring agency other than the board.

6. Employment at an accredited school or college will not be accepted in lieu of performance of the required hours of continuing education.

7. Presenters of an approved continuing education program may not submit hours for their presentation of, or preparation for, the program as continuing education.

E. Failure to Meet Requirements

1. If an RVT fails to obtain a minimum of ten continuing education units within the prescribed fiscal period, his certificate shall automatically expire on September 30, and shall remain expired until such time as the continuing education requirements have been met and documented to the satisfaction of the board. If the RVT practices during the period of such expiration, then he is subject to disciplinary action by the board.

2. The board may grant extensions of time for extenuating circumstances. The RVT must petition the board at least 30 days prior to the expiration of the certificate. The board may require whatever documentation it deems necessary to verify the circumstances necessitating the extension.

F. Approved Continuing Education Programs

1. Organizations sponsoring a continuing education program for RVTs must submit a request for approval of the program to the board no less than 14 days prior to the commencement of the program. Information to be submitted shall include:

- a. the name of the proposed program;
- b. course content; and
- c. the number of continuing education units to be obtained by attendees.

2. RVTs may also submit a request for approval of a continuing education program, however, it must be submitted to the board no less than 14 days prior to the commencement of the program. Information to be submitted shall comply with the requirements of §811.F.1.

3. Continuing education units which are submitted for renewal and were not pre-approved by the board may be reviewed by the board. If the units are not approved, the RVT will be required to take additional continuing education in an approved program prior to renewal of his certificate.

G. The promulgation of rules by the board published in the *Louisiana Register* on November 20, 2009 shall become effective for the period of time (July 1, 2010 - June 30, 2011) for the 2011-2012 annual certificate renewal and every annual certificate renewal period thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1549.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:227 (March 1990), amended LR 23:1686 (December 1997), LR 26:84 (January 2000), LR 36:

Chapter 12. Certified Animal Euthanasia Technicians §1227. Continuing Education

A. Basic Requirements

1. - 2. ...

3. Proof of attendance, which shall include the name of the course, date(s) of attendance, hours attended, and specific subjects attended, shall be attached to the annual renewal form. Proof of attendance must include verification from the entity providing or sponsoring the educational program. However, the actual mediums of video tapes, self-test programs with third party grading, and/or self-help instruction, including online instruction with third party grading, are limited to three hours per fiscal period (July 1 through June 30). The requirement of pre-approval of the program by the board continues to apply.

A.4. - B.2. ...

C. Approved Continuing Education Programs

1. Organizations sponsoring a continuing education program for CAETs must submit a request for approval of the program to the board no less than 14 days prior to the commencement of the program. Information to be submitted shall include:

a. - c. ...

2. CAETs may also submit a request for approval of a continuing education program, however, it must be submitted to the board no less than 14 days prior to the commencement of the program. Information to be submitted shall comply with the requirements of Section 1227.C.1.

3. ...

D. The promulgation of rule amendments by the board published in the *Louisiana Register* on November 20, 2009 shall become effective for the period of time (July 1, 2010-

June 30, 2011) for the 2011-2012 annual certificate renewal and every annual certificate renewal period thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1558.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 26:321 (February 2000), amended LR 36:

Public Comments

Interested parties may submit written comments to Wendy D. Parrish, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801, or by facsimile to (225) 342-2142. Comments will be accepted through the close of business on December 18, 2009. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on Tuesday, December 22, 2009, at 10:00 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, Louisiana.

Wendy D. Parrish
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Continuing Veterinary Medicine Education**

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

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at \$300 in FY 2010). Licensees and certificate holders will be informed of this rule change via the board's regular newsletter or other direct mailings, which result in minimal costs to the Board.

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 no increase in fees will result from the amendment.

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

The proposed rules are being amended and adopted to address the requirements and program approval of continuing veterinary medicine education necessary for annual renewal of a veterinary medicine license, registered veterinary technician certification, and animal euthanasia technician certification, in order to maintain and improve professional competencies for the health, welfare, and safety of the citizens and animals of Louisiana. Amended and adopted rules allow one-half of the required continuing education credits to be taken as compendium/self-help and online continuing education courses with third party grading; continuing education for annual renewal for registered veterinary technicians and in-house continuing education programs for veterinarians. Upon promulgation, the proposed rules are intended to become effective for the period of time (July 1, 2010-June 30, 2011) for the 2011-2012 annual license and certification renewal and every annual license and certification renewal period thereafter, allowing veterinarians to increase the number of hours of continuing education credits obtained through compendium, self-help and online methods from 4 hours currently, to 10 hours as proposed. It will likely decrease the amounts affected veterinarians spend in fees to obtain the required 20 continuing education credits each year. Affected veterinarians will also

have reduced travel costs and reduced demands on their time because they can obtain their credits from their own offices or homes. The proposed rules have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

The Notice of Intent of the proposed rules was first published in the *Louisiana Register* on May 20, 2009, however, due to written comments received the Board elected to make substantive changes. First, the requirement of "Board Certified specialist" as the presenter for in-house continuing education has been deleted from Section 409A4 in the original Notice of Intent. Second, due to the deletion above, the effective date will now be for the period of time (July 1, 2010-June 30, 2011) for the 2011-2012 annual license and certification renewal and every annual license and certification renewal period thereafter. The appropriate state officials and persons providing comments have been notified of the changes and the Board's decision.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule.

Wendy D. Parrish
Executive Director
0911#049

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing and

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers Children's Choice Family Training Services (LAC 50:XXI.11303 and 12101)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities proposes to amend LAC 50:XXI.11303 and §12101 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. 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, Office of the Secretary, Bureau of Health Services Financing repromulgated the provisions governing the Children's Choice Waiver for codification in the *Louisiana Administrative Code (Louisiana Register, Volume 28, Number 9)*. The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities promulgated an Emergency Rule to amend the provisions governing the Children's Choice Waiver to clarify the family training service description and the components of this service that qualify for Medicaid payment (*Louisiana Register, Volume 35, Number 9*). This proposed Rule is being promulgated to continue the provisions of the September 20, 2009 Emergency Rule.

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S.

49:972 by increasing the travel expenses of families who attend family training events.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

Subpart 9. Children's Choice

Chapter 113. Service

§11303. Service Definitions

A. - D.5. ...

E. Family training consists of formal instruction offered through training and education designed to assist the families of Children's Choice Waiver (CCW) participants in meeting the needs of their children.

1. The training must be conducted by professional organizations or practitioners and offer formal instruction that is relevant to the waiver participant's needs as identified in the plan of care.

2. Family training must be prior approved by the Bureau of Health Services Financing or its designee, the Office for Citizens with Developmental Disabilities, and incorporated into the approved plan of care.

3. For purposes of this service only, "family" is defined as unpaid persons who live with or provide care to the waiver participant, and may include a parent, stepparent, grandparent, sibling, legal guardian or foster family.

4. Payment for family training services includes coverage of registration and training fees associated with formal instruction in areas relevant to the participant's needs as identified in the plan of care. Payment is not available for the costs of travel, meals and overnight lodging to attend a training event or conference.

F. - F.2. ...

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 28:1983 (September 2002), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 33:1871 (September 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

§12101. Reimbursement Methodology

A. - B.1. ...

2. Family training shall be reimbursed at cost.

B.3. - B.4.j.iv. ...

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 28:1987 (September 2002), LR 33:1872 (September 2007), amended by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities, LR 34:250 (February 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 36:

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.

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 may have an adverse impact on family functioning, stability and autonomy as described in R.S. 49:972 by increasing the travel expenses of families who attend family training events.

Public Comments

Interested persons may submit written comments to Jerry Phillips, 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. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, December 30, 2009 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.

Alan Levine
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers Children's Choice Family Training 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 09-10. The Children's Choice Waiver is a capped waiver service with consumer directed choice of services. It is anticipated that consumers will increase their use of other services covered under the waiver to compensate for the reduction in family training services; therefore, any savings to the state from the reduction of expenditures for family training services would be shifted to cover the increased cost associated with other services. It is anticipated that \$410 (\$205 SGF and \$205 FED) will be expended in FY 09-10 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 federal revenue collections other than the federal share of the promulgation costs for FY 09-10. It is anticipated that \$205 will be collected in FY 09-10 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend the provisions governing family training services provided in the Children's Choice Waiver to exclude payment for travel costs associated with attending family training (approximately 9 recipients annually), and to limit payments to the costs associated with registration and training fees only. Although this proposed rule will not have a cost to the state other than the cost of promulgation for FY 09-10, it is anticipated that there will be an average cost to

the recipient of approximately \$2,128 annually for travel expenses to attend family training events.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips
Medicaid Director
0911#093

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities Per Diem Rate Reduction (LAC 50:VII.1305 and 1309)

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 50:VII.1305 and 1309 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. In the event the department projects that expenditures in the Medical Vendor Program may exceed the funding allocated in the General Appropriations Act, the secretary shall, subject to the review and approval of the Joint Legislative Committee on the Budget, implement reductions in the Medicaid Program as necessary to control expenditures to the level of funding appropriated by the legislature. Notwithstanding any law to the contrary, the secretary may utilize various cost-containment measures to accomplish these reductions, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations and other measures as allowed by federal law. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

As the result of a budgetary shortfall, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for non-state nursing facilities to reduce the reimbursement rates paid for home leave of absence days and adjusted the reimbursement rates paid for hospital leave of absence days (*Louisiana Register*, Volume 35, Number 9).

Act 244 of the 2009 Regular Session of the Louisiana Legislature authorized the department to rebase nursing facility rates more often than every two years. Contingent on Senate Bill 247 (enacted as Act 244) being enacted into law, Act 122 of the 2009 Regular Session of the Louisiana Legislature appropriated principle from the Medicaid Trust Fund for the Elderly as state match for rebasing nursing facility rates. For FY 2010-2011, state general fund will be required to continue nursing facility rates at the rebased level. Because of the fiscal crisis facing the state, the state general funds will not be available to replace the statutory dedication funds from the Medicaid Trust Fund for the Elderly. Consequently, the department will be reducing nursing facility rates effective July 1, 2010 to remove the rebased amount. The effect of the reductions will be to sunset the 2009-2010 nursing facility rebasing.

This proposed Rule will also clarify the provisions governing the reimbursement methodology for state-owned or operated nursing facilities and non-state, government-owned or operated nursing facilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care Services

Subpart 1. Nursing Facilities

Chapter 13. Reimbursement

§1305. Rate Determination

A. – D.4.b....

5. Adjustment to the Rate. Adjustments to the Medicaid daily rate may be made when changes occur that will eventually be recognized in updated cost report data (such as a change in the minimum wage, a change in FICA or a utility rate change). These adjustments would be effective until the next rebasing of cost report data or until such time as the cost reports fully reflect the change.

6. Budget Shortfall. In the event the department is required to implement reductions in the nursing facility program as a result of a budget shortfall, a budget reduction category shall be created. Without changing the parameters established in these provisions, this category shall reduce the statewide average Medicaid rate by reducing the reimbursement rate paid to each nursing facility using an equal amount per patient day.

a. Effective for dates of service on or after July 1, 2010, the per diem rate paid to non-state nursing facilities shall be reduced by an amount equal to 10.52 percent of the rate in effect on June 30, 2010 until such time that the rate is rebased.

E. ...

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 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§1309. Non-State, Government Owned or Operated Facilities and State-Owned or Operated Facilities

A. Non-state, government-owned or operated nursing facilities will be paid a case-mix reimbursement rate in accordance with §1305.

1. Repealed.

B. State-owned or operated nursing facilities will be paid a prospective per diem rate. The per diem payment rate for each of these facilities will be calculated annually on July 1, using the nursing facility's allowable cost from the most recently filed Medicaid cost report trended forward from the midpoint of the cost report year to the midpoint of the rate year using the index factor.

1. – 2. Repealed.

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 28:1793 (August 2002), amended LR 30:53 (January 2004), LR 31:1596 (July 2005), LR 32:2265 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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 may have an adverse impact on family functioning, stability or autonomy as described in R.S. 49:972 in the event that provider participation in the Medicaid Program is diminished as a result of reduced reimbursement rates.

Public Comments

Interested persons may submit written comments to Jerry Phillips, 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. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, December 30, 2009 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. 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.

Alan Levine
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Nursing Facilities Per
Diem Rate Reduction**

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

It is anticipated that the implementation of this proposed rule will result in estimated programmatic savings to the state of approximately \$22,927,600 for FY 10-11 and \$31,306,573 for FY 11-12. It is anticipated that \$574 (\$287 SGF and \$287 FED) will be expended in FY 09-10 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on the anticipated Federal Medical Assistance Percentage (FMAP) for FY 2011 as allowed in the American Recovery and Reinvestment Act of 2009 (72.55%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund savings could be less. In January of FY 10-11, the FMAP is anticipated to drop to 63.61%. In the event of this decrease, the state general funds will increase to the federally required match.

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

It is anticipated that the implementation of this proposed rule will reduce federal revenue collections by approximately \$60,597,354 for FY 10-11 and \$54,724,130 for FY 11-12. It is anticipated that \$287 will be collected in FY 09-10 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above

are based on the anticipated Federal Medical Assistance Percentage (FMAP) for FY 2011 as allowed in the American Recovery and Reinvestment Act of 2009 (72.55%). Additional federal funds are projected to be available in the current year through December 2010. To the extent that DHH utilizes federal match, up to the allowable match for the eligibility period (through December 2010), state general fund savings could be less. In January of FY 10-11, the FMAP is anticipated to drop to 63.61%. In the event of this decrease, the state general funds will increase to the federally required match.

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

Because of the fiscal crisis facing the state, the state general funds will not be available to replace the statutory dedication funds from the Medicaid Trust Fund for the Elderly that were used to rebase the nursing facility rates in FY 2010. Therefore, this proposed rule is being promulgated to amend the provisions governing non-state nursing facilities to reduce the per diem rates which will in effect remove the rebased amount (approximately 6,119,044 nursing facility days in FY 2011). It is anticipated that implementation of this proposed rule will reduce program expenditures in the Medicaid Program by approximately \$83,524,954 for FY 10-11 and \$86,030,703 for FY 11-12.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is anticipated that the implementation of this proposed rule may have a negative effect on employment as it will reduce the payments made to non-state nursing facilities. The reduction in payments may adversely impact the financial standing of these facilities and could possibly cause a reduction in employment opportunities.

Jerry Phillips
Medicaid Director
0911#094

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing**

**Pain Management Clinics
Licensing Standards (LAC 48:I.Chapter 78)**

The Department of Health and Hospitals, Bureau of Health Services Financing proposes to amend LAC 48:I.Chapter 78 as authorized by R.S. 36:254 and R.S. 40:2198.11-13. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq.

In compliance with Act 488 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 establishing licensing standards for pain management clinics (*Louisiana Register*, Volume 34, Number 1). The department now proposes to amend the provisions of the January 20, 2008 Rule to clarify the provisions governing the licensure of pain management clinics.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 78. Pain Management Clinics

Subchapter A. General Provisions

§7801. Definitions

Cessation of Business—a clinic ceases providing services during its stated hours of operation.

Chronic Pain—pain which persists beyond the usual course of a disease or beyond the expected time for healing from bodily trauma, or pain associated with a long-term incurable or intractable medical illness or disease.

Primarily Engaged—the majority of patients, 51 percent or more of the patients seen on any day a clinic is in operation, are issued a narcotic prescription for the treatment of chronic non-malignant pain. A physician, who in the course of his practice, treats patients with chronic pain, shall not be considered primarily engaged in the treatment of chronic non-malignant pain by prescribing narcotic medications provided that the physician meets the following criteria as certified in writing from the board:

1. treats patients within his/her areas of specialty and who utilizes other treatment modalities in conjunction with narcotic medications;

2. is certified by a member board of the American Board of Medical Specialties, or is eligible for certification based upon his completion of an Accreditation Council for Graduate Medical Education (ACGME) certified residency training program; and

3. currently holds medical staff privileges that are in good standing at a hospital in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. R.S. 40:2198.11-13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:80 (January 2008), amended LR 34:1418 (July 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter B. Licensing Procedures

§7811. General Provisions

A. ...

B. The department may conduct an investigation to determine whether or not a clinic is functioning as a pain management clinic. The investigation may include an on-site visit and a review of medical records at the clinic to determine whether the clinic is a pain management clinic.

C. A clinic shall renew its license annually. A renewal application and licensing fee shall be submitted at least 30 days before the expiration of the current license. Failure to do so shall be deemed to be a voluntary termination and expiration of the facility's license. The license shall be surrendered to the department within 10 days, and the facility shall immediately cease providing services.

D. A license shall be valid only for the clinic to which it is issued and only for that specific geographic address. A

license shall not be subject to sale, assignment, or other transfer, voluntary or involuntary. The license shall be conspicuously posted in the clinic.

1. Repealed.

E. Any change regarding the clinic's name, geographical or mailing address, telephone number, or key administrative staff or any combination thereof, shall be reported in writing to the Health Standards Section within five working days of the change.

1. Any request for a name change requires a change in the license and shall be accompanied by a \$25 fee.

F. A separately licensed clinic shall not use a name which is substantially the same as the name of another clinic licensed by the department.

G. Any request for a duplicate license shall be accompanied by a \$5 fee.

H. A clinic intending to have controlled dangerous medications on the premises shall make application for a Controlled Dangerous Substance (CDS) License, and shall comply with all federal and state regulations regarding procurement, maintenance and disposition of such medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.2198.11-13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:81 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§7813. Initial Application Process

A. - B.4. ...

5. a criminal background check from the Louisiana State Police on all owners and all physicians employed or providing medical services on behalf of the pain management clinic;

a. the criminal background check must indicate whether or not the owner(s) or physician(s) have any felony convictions, and any convictions of the Uniform Controlled Dangerous Substances Statute (both federal and state);

6. verification of the physician owner's certification in the subspecialty of pain management unless said owner meets the exemption at §7803(B);

7. proof of operation as an urgent care facility if the pain management clinic was in operation on or before June 15, 2005;

a. this proof shall be an occupational license or certificate of operation issued by local governmental authorities, in addition to verifying information that indicates the facility held itself out to the public as an urgent care facility;

8. the floor plan of the pain management clinic with the dimensions and configuration of each room;

9. the clinic's hours of operation; and

10. the applicable licensing fee.

C. If the initial licensing packet is incomplete, the department shall notify the applicant of the missing information and the deadline to submit the additional requested information. If the applicant has not submitted a complete packet within 90 days of receipt of the initial application, the application shall be closed. After the application is closed, an applicant who is interested in applying for a license to operate a pain management clinic

must submit a new initial licensing packet with a new licensing fee to start the initial licensing process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.2198.11-13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:81 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§7815. Licensing Surveys

A. - C. ...

D. A follow-up survey may be done following any licensing survey or any complaint survey to ensure correction of a deficient practice cited on the previous survey. Such surveys shall be unannounced to the clinic.

E. If deficiencies have been cited at a survey, regardless of whether an acceptable plan of correction is required, the department may issue appropriate sanctions, including, but not limited to:

1. civil monetary penalties;
2. directed plans of correction; and
3. license revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.2198.11-13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:81 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§7817. Issuance of Licenses

A. - C.1.d. ...

2. A clinic with a provisional license may be issued a full license if at the follow-up survey, the clinic has corrected the deficient practice and is now in compliance with the licensing standards. A full license will be issued for the remainder of the year until the clinic's license anniversary date.

3. - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.2198.11-13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:82 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§7819. License Denial, Revocation or Non-Renewal

A. - B.16. ...

C. In the event that a clinic's license is revoked or denied renewal, other than for cessation of business, no other license application shall be accepted by the department from the owners of the clinic for a period of two years from the date of the final disposition of the revocation or denial action.

D. ...

E. If a pain management clinic has been issued a notice of revocation or suspension and the appeal rights are pending when the clinic's license is due for annual renewal, the license renewal shall be denied. If there is a final judgment reversing the revocation or suspension, the license shall be reinstated subject to the performance of required survey(s) and payment of any applicable license renewal fee(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.2198.11-13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:82 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

§7821. Notice and Appeal Procedures

A. ...

1. The notice shall specify reasons for the action and shall notify the applicant or clinic of the right to request an administrative reconsideration or to request an appeal.

2. - C.2.a. ...

3. The request for an 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.

D. A voluntary termination or expiration of the license is not considered an adverse action and is therefore not appealable.

E. There is no right to appeal the issuance of a provisional license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.2198.11-13.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:83 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

Subchapter D. Facility Requirements

§7849. Health and Safety Requirements

A. - E.3. ...

b. oxygen and appropriate delivery supplies, including but not limited to:

i. nasal cannula;

ii. masks; and

iii. a pocket CPR mask or bag-valve mask with supply tubing;

c. intravenous fluids and administration supplies;

d. sterile dressings; and

e. a defibrillator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.2198.11-13

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:85 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:

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 or autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments to Jerry Phillips, 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. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, December 30, 2009 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.

Alan Levine

Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Pain Management Clinics Licensing Standards

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

It is anticipated that implementation of this proposed rule will not have a programmatic fiscal impact to the state other than the cost of promulgation for FY 09-10. It is anticipated that \$984 (\$984 SGF) will be expended in FY 09-10 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 federal revenue collections.

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 of pain management clinics to clarify existing provisions in force. It is anticipated that implementation of this proposed rule will not have economic cost or economic benefits for these entities in FY 09-10, FY 10-11 and FY 11-12.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jerry Phillips
Medicaid Director
0911#095

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of Aging and Adult Services Division of Adult Protective Services

Adult Protective Services (LAC 48:XIII.17101-17125)

Editor's Note: This Notice of Intent is being repromulgated with a new hearing date. The original Notice of Intent may be viewed in its entirety on pages on 1969-1974 of the September issue of the *Louisiana Register*.

The Department of Health and Hospitals, Office of Aging and Adult Services, Division of Adult Protective Services proposes to amend LAC 48:XIII.17101-17125 under the Adult Protective Services Program as authorized by R.S. 15:1501-1511. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

During the 2008 Regular Session of the Louisiana Legislature, the Louisiana Revised Statute which authorizes the Adult Protective Services program (R.S. 14:403.2) was amended and portions of the statute were placed in R.S. 15:1501-511. At the same time, the office of Aging and Adult Services was created within the Department of Health and Hospitals and the Bureau of Protective Services was

transferred into that office becoming the Division of Adult Protective Services within that office. This proposed Rule is being promulgated to adopt the changes created by the new legislation and the administrative changes within the department.

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 a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by ensuring the investigation of allegations of abuse, neglect, exploitation or extortion of adults with disabilities living in family settings.

A regulatory flexibility analysis pursuant to R.S. 49:965.6 has been conducted. It has been determined that the promulgation of this Rule will not have an adverse impact on small business.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 13. Protective Services Agency

Chapter 171. Division of Adult Protective Services

§17101. Statement of Policy

A. The Department of Health and Hospitals is committed to preserving and protecting the rights of individuals to be free from abuse, neglect, exploitation, or extortion.

B. In pursuit of this commitment and in accordance with the provisions of R.S. 14:403.2, and R.S. 15:1501-15:1511 the Department of Health and Hospitals names the Office of Aging and Adult Services, Division of Adult Protective Services (APS) as the Protective Services Agency in order to provide protection to persons ages 18-59 with mental, physical, or developmental disabilities that substantially impair the person's ability to provide adequately for his/her own protection.

C. The primary function of Adult Protective Services is to investigate and/or assess reports of abuse, neglect, exploitation, or extortion consistent with the criteria contained in R.S. 14:403.2 and R.S. 15:1501-15:1511 to determine if the situation and condition of the subject of the report warrant further action and, if so, to prepare and implement a plan aimed at remedying or improving the situation. Adult Protective Services staff will provide protective services to each individual in need of protection until that person's situation has stabilized, that person is no longer at risk from the situation described in the report, or that person, having demonstrated the capacity to do so, refuses assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R. S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:434 (April 1994), amended LR 27:312 (March 2001), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17103. Goals and Objectives

A. The primary goal of the OAAS Division of Adult Protective Services is to prevent, remedy, halt, or hinder abuse, neglect, exploitation, or extortion of individuals in need of services as defined in this regulation and consistent with the provisions of R.S. 14:403.2 and R.S. 15:1501-15:1511. In order to achieve this goal, Adult Protective Services shall pursue the following objectives:

1. to establish a system of mandatory reporting, intake, classification, timely investigation and response to allegations of abuse, neglect, exploitation, and extortion;

2. to provide protective services to the individual while assuring the maximum possible degree of self-determination and dignity;

3. in concert with other community service and health service providers, to arrange and facilitate the process toward developing individual and family capacities to promote safe and caring environments for individuals in need of protection;

4. to secure referral or admission to appropriate alternative living arrangements if all efforts to maintain the individual in his/her own home fail;

5. to assist individuals in need of protection to maintain the highest quality of life with the least possible restriction on the exercise of personal and civil rights;

6. to educate the general public, as well as private and public service agencies, regarding the Protective Services Agency and the requirements of R.S. 14:403.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:435 (April 1994), amended LR 27:313 (March 2001), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17105. Definitions

For the purposes of this Chapter, the following definitions shall apply.

Abandonment—the desertion or willful forsaking of an adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

Abuse—the infliction of physical or mental injury on an adult by other parties, including but not limited to such means as sexual abuse, abandonment, isolation, exploitation, or extortion of funds or other things of value, to such an extent that his/her health, self-determination, or emotional well-being is endangered. In determining whether an injury is sufficient to endanger the health, self-determination, or emotional well-being of the adult, the following criteria shall be considered:

a. with respect to physical injury, the injury must be sufficient to ordinarily require professional medical intervention beyond first-aid, or, the behavior in question must be sufficient to create a potential injury of that severity;

b. with respect to mental injury, the injury must be sufficient to ordinarily require mental health services of a clinical nature, or, the behavior in question must be sufficient to create a potential injury of that severity;

c. with respect to isolation, acts of isolation used in a manner where the individual is alone in a room/area from which he/she cannot leave, constitute behavior which has the potential to result in mental injury or unwarranted restriction of the adult's self-determination;

d. with respect to use of restraints, inappropriate and unauthorized use of any chemical and/or mechanical restraints, or any type of restraint which prevents the free movement of either the arms or legs and which immobilizes the individual, shall represent potential physical or mental injury and possible violation of an individual's self-determination. Chemical and/or mechanical restraints

ordered by a physician and used in accordance with medical guidelines shall not constitute abuse.

Adult—any individual 18 years of age or older and under the age of 60, or an emancipated minor who, due to a physical, mental, or developmental disability is unable to manage his own resources, carry out the activities of daily living, or protect himself from abuse, neglect or exploitation.

Adult Protective Services (APS)—that division within the Department of Health and Hospitals' Office of Aging and Adult Services determined by the department as the Protective Services Agency for any individual between the ages of 18 and 59 years of age in need of adult protective services, pursuant to the provisions of R.S. 14:403.2 and R.S. 15:1501–15:1511, to provide protection to adults with disabilities as defined herein.

Capacity to Consent—the ability to understand and appreciate the nature and consequences of making decisions concerning one's person, including but not limited to provisions for health or mental health care, food, shelter, clothing, safety, or financial affairs. This determination may be based on assessment, or investigative findings, observation or medical or mental health evaluations.

Caregiver—any person or persons, either temporarily or permanently responsible for the care of a physically or mentally disabled adult. Caregiver includes but is not limited to adult children, parents, relatives, neighbors, day-care personnel, adult foster home sponsors, providers of substitute family care, personnel of public and private institutions and facilities, adult congregate living facilities, and nursing homes which have voluntarily assumed the care of an adult as defined herein have assumed voluntary residence with an individual, or have assumed voluntary use or tutelage of an individual's assets, funds, or property, and specifically shall include city, parish, or state law enforcement agencies.

Emancipated Minor—a person under the age of 18 who administers his/her own affairs or who is relieved of the incapacities which normally attach to minority. Minors can be emancipated by notarial act, marriage, or judicial pronouncement.

Exploitation—the illegal or improper use or management of an adult's funds, assets, or property, or the use of an adult's power of attorney or guardianship for one's own profit or advantage.

Extortion—the acquisition of a thing of value from an unwilling or reluctant adult by physical force, intimidation, abuse, neglect, or official authority.

Isolation—includes:

- a. intentional acts committed for the purpose of preventing, and which do serve to prevent, an adult from having contact with family, friends, or concerned persons. This shall not be construed to affect a legal restraining order;
- b. intentional acts committed to prevent an adult from receiving his mail or telephone calls;
- c. intentional acts of physical or chemical restraint of an adult committed for the purpose of preventing contact with visitors, family, friends, or other concerned persons;
- d. intentional acts which restrict, place, or confine an adult in a restricted area for the purposes of social deprivation or preventing contact with family, friends, visitors, or other concerned persons. However, medical

isolation prescribed by a licensed physician caring for the adult shall not be included in this definition.

Neglect—the failure by the caregiver responsible for an adult's care or by other parties, to provide the proper or necessary support or medical, surgical, or any other care necessary for his well-being. No adult who is being provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall, for that reason alone, be considered to be neglected or abused.

Protective Services—those activities developed to assist individuals in need of protection. Protective services include but are not limited to: receiving and screening information on allegations of abuse, neglect, exploitation or extortion; conducting investigations and/or assessments of those allegations to determine if the situation and condition of the alleged victim warrants corrective or other action, preparing a plan using available community resources aimed at remedying or reducing the risk from abuse, neglect, exploitation or extortion, providing case management, as needed, to assure stabilization of the situation, and arranging of or making referrals for needed services and/or legal assistance to initiate any necessary remedial action.

Regional Coordinating Council—a regionally constituted committee composed of representatives of both public and private agencies providing services, with the objectives of identifying resources, increasing needed supportive services, avoiding duplication of effort, and assuring maximum community coordination.

Self-Neglect—the failure, either by the adult's action or inaction, to provide the proper or necessary support or medical/surgical or other care necessary for his/her well-being. No individual who is provided treatment in accordance with a recognized religious method of healing in lieu of medical treatment shall, for that reason alone, be considered to be self-neglected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:435 (April 1994), amended LR 27:313 (March 2001), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17107. Eligibility for Services

A. The protection of this Rule extends to any adult as defined by law, 18-59 years of age or emancipated minors, living in unlicensed community settings, either independently or with the help of others, who is alleged to be abused, neglected, exploited, or extorted.

B. There is no financial eligibility requirement for services provided by Adult Protective Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:436 (April 1994), amended LR 27:313 (March 2001), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17109. Reporting

A.1. Any person having cause to believe that an individual's physical or mental health or welfare has been or may be further adversely affected by abuse, neglect, exploitation, or extortion shall report that knowledge or belief. These reports can be made to:

- a. Adult Protective Services; and/or,
- b. any local or state law enforcement agency.

2. Reports of abuse, neglect, exploitation and extortion shall be processed through the DHH Office of Aging and Adult Services, Division of Adult Protective Services' central intake system. Reports should be made/forwarded to: Adult Protective Services, P.O. Box 3518, Bin #11, Baton Rouge, LA 70821. The local telephone number is (225) 342-9057. The state-wide, toll-free telephone number is 1-800-898-4910.

B. Intake. Incident reports received by APS shall be screened to determine eligibility, and shall be assigned a priority status for investigation as described in §17121 of this Chapter. When reports are not accepted by APS, the reporter shall be advised why his/her report was rejected for investigation. Such reports will be referred to other social, medical, and law enforcement agencies, as deemed appropriate or required by law.

C. Priorities. In order to assure the timely delivery of protective services and to eliminate the potential danger of prolonging an abusive situation, a priority system for case response has been established. At the time a report of abuse is received in Adult Protective Services, the report will be prioritized and assigned for investigation. In making assignments, the following categories will be used.

1. Priority One

a. Priority One reports are those which allege the individual in need of protection is abused, neglected, exploited, or extorted, and has suffered or is at imminent risk of suffering serious harm or serious physical injury which, if untreated, may result in permanent physical damage or death.

b. Examples of Priority One reports include but are not limited to head injuries, spinal injuries, severe cuts, broken limbs, severe burns, and/or internal injuries and sexual abuse where there is danger of repeated abuse, situations where medical treatment, medications or nutrition necessary to sustain the individual are not obtained or administered, as well as over-medication or unreasonable confinement.

c. Staff must respond to Priority One cases within 24 hours of receipt by Adult Protective Services. For purposes of this Section, "case response" means that the investigator must attempt a face-to-face visit with the individual in need of protection within this 24-hour period.

2. Priority Two

a. Priority Two reports allege the individual in need of protection is abused, neglected, exploited, or extorted, and as a result, is at risk of imminent serious physical injury, or harm.

b. Priority Two reports may include, but not be limited to, those situations in which there is failure to provide or obtain mental health and medical treatment which, if untreated, may cause serious harm to the individual. This includes self-abusive behavior and failure to treat physical ailments. It could also include inadequate attention to physical needs such as insufficient food, medicine, inadequate heat or excessive heat, unauthorized use, and/or exploitation of the victim's income or property.

c. Staff must respond to Priority Two cases within five working days of receipt by Adult Protective Services. For purposes of this Section, "case response" means that the

investigator must attempt a face-to-face visit with the individual in need of protection within a five working day period, so long as the investigation of Priority One cases is not delayed.

3. Priority Three

a. Priority Three reports include all other allegations in which the individual in need of protection is alleged to be abused, neglected, exploited, or extorted which do not involve risk of imminent serious physical injury, or harm and pose no immediate threat of serious injury or harm.

b. Staff must respond to Priority Three cases within 10 working days of receipt by Adult Protective Services. For purpose of this Section, "case response" means that the investigator must attempt a face-to-face interview with the individual in need of protection within this 10 day working period, so long as the investigation of Priority One and Two cases are not delayed.

4. When APS is not staffed sufficiently to respond promptly to all reported cases, APS shall set priorities for case response and allocate staff resources to serve those adults with disabilities with the most immediate need for protection.

D. Reporting Requirements

1. Allegations of known or suspected abuse, neglect, exploitation, or extortion shall include:

- a. the name and address of the alleged victim;
- b. the name and address of the person providing care to the alleged victim, if available; and
- c. the name of the person(s) suspected of abuse, neglect, extortion or exploitation, where different from item b above, if available; and
- d. other pertinent information.

2. Allegations of abuse, neglect, exploitation or extortion made by the alleged victim shall not be considered to be any less credible than allegations made by others and shall be reported according to procedures established in this Chapter.

3. All allegations of physical or sexual abuse shall be reported to the chief law enforcement agency of the parish in which the incident is reported to have occurred. This report is to be made by the end of the business day subsequent to the day on which the report is received.

E. Failure to report, false reporting, or obstructing reports or investigations may be reported by APS to law enforcement or other regulatory agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:436 (April 1994), amended LR 27:314 (March 2001), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17111. Investigation and Service Planning

A. Investigation. Reports accepted by Adult Protective Services for investigation shall be prioritized according to §17109 of this Rule. The subsequent investigation and assessment shall determine if the situation and condition of the adult requires further action and shall include determining the nature, extent, and cause of the abuse, neglect, exploitation, extortion, identifying the person or persons responsible for abuse, neglect, exploitation, or extortion, if known; if possible, interviewing the individual

and visiting the individual's home or the location where the incident occurred. The investigation or assessment shall also include consultation with others having knowledge of the facts of the case. An Adult Protection worker shall have access to any records or documents including client-identifying information and medical, psychological, criminal or financial records necessary to the performance of the agency's duties without cost and without unnecessary delay. APS may petition a court of competent jurisdiction for such documents if access to them is refused. A report of the investigation shall be prepared, which contains an assessment of the individual's present condition/status.

B. Service Plan. The Protective Service worker will be responsible for developing a service plan based upon the case determination. If, at the end of the investigation, it is determined that the individual has been abused, neglected, exploited, and/or extorted by other parties, and that the problem cannot be remedied by extrajudicial means, Adult Protective Services shall refer the matter to the local district attorney's office. Evidence must be presented, together with an account of the protective services given or available to the individual, and a recommendation as to what services, if ordered, would eliminate the abuse/neglect.

C. Right to Refuse Services. Protective Services may not be provided in cases of self-neglect to any individual who does not consent to such services or who, having consented, withdraws such consent. Nothing herein shall prohibit Adult Protective Services, the district attorney, the coroner, or the judge from petitioning for interdiction pursuant to Civil Code, Articles 389 through 399 or petitioning for an order for protective custody or for judicial commitment pursuant to R.S. 28:50 et seq., seeking an order for emergency protective services pursuant to R.S. 15:1511, or prohibit the district attorney from seeking an order for involuntary protective services pursuant to R.S.15:1508(B)(5).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:436 (April 1994), amended LR 27:314 (March 2001), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17113. Legal Interventions

A. The Adult Protective Services Agency may petition any court of competent jurisdiction for the following types of orders. Except in the case of emergency orders, the DHH Bureau of Legal Services shall be consulted for assistance in preparing petitions:

1. order to be granted access [R. S. 15:1507 C];
2. order of protective services [R. S. 15:1507 F and 15:508];
 - a. to provide mandatory counseling;
 - b. enjoin the accused to prevent continued abuse, neglect, exploitation or extortion;
 - c. require an medical or psychiatric/psychological of the client to determine least restrictive setting;
 - d. enjoin any party from interfering with the provision of protective services;
 - e. provide protective services, if the adult lacks capacity to consent and no other authorized person is available or willing.
3. Ex parte order for emergency protective services may be filed to prevent immediate harm, and may be

requested orally or telephonically when there is not time to file in writing. Oral orders are to be followed with written petitions by close of business of the following day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:437 (April 1994), amended LR 27:314 (March 2001), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17115. Confidentiality

A. Information contained in the case records of Adult Protective Services shall not be released without a written authorization from the involved individual or his/her legally authorized representative, except that the information may be released to law enforcement agencies pursuing enforcement of criminal statutes related to the abuse of the adult or the filing of false reports of abuse or neglect, or to social service agencies, licensed health care providers, and appropriate local or state agencies where indicated for the purpose of coordinating the provision of services or treatment necessary to reduce the risk to the adult from abuse, neglect, exploitation, or extortion and to state regulatory agencies for the purpose of enforcing federal or state laws and regulations relating to abuse, neglect, exploitation or extortion by persons compensated through state or federal funds.

1. Requests for copies of confidential information are to be forwarded to the APS Director, P.O. Box 3518, Bin #11, Baton Rouge, La 70821.

2. In instances where the adult is determined by Adult Protective Services as unable to give consent and there is no legally appointed guardian, records may be released in response to an order by a judge of a court of competent jurisdiction.

B. The identity of any person who in good faith makes a report of abuse, neglect, exploitation, or extortion shall be confidential and shall not be released without the written authorization of the person making the report, except that the information may be released to law enforcement agencies pursuing enforcement of criminal statutes related to the abuse of the adult or to the filing of false reports of abuse or neglect.

C. Prior to releasing any information, except information released to law enforcement agencies as provided herein, the adult protection agency shall edit the released information to protect the confidentiality of the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:437 (April 1994), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17117. Immunity

A. Under the provision of R.S. 15:1504.B, no cause of action shall exist against:

1. any person who, in good faith, makes a report, cooperates in an investigation by an agency, or participates in judicial proceedings;
2. any DHH Protective Services staff who, in good faith, conducts an investigation or makes an investigative judgment or disposition;

3. the persons listed in Items 1 and 2 of this Section shall have immunity from Civil or Criminal liability that otherwise might be imposed or incurred.

B. This immunity shall not extend to:

1. any alleged principal, conspirator, or accessory to an offense involving the abuse or neglect of the individual;

2. any person who makes a report known to be false or with reckless disregard for the truth of the report;

3. any person charged with direct or constructive contempt of court, any act of perjury as defined in Subpart C of Part VII of the Louisiana Criminal Code or any offense affecting judicial functions and public records as defined in Subpart D of Part VII of the Louisiana Criminal Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:437 (April 1994), amended LR 27:314 (March 2001), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17119. The Department of Health and Hospitals' Protective Services System

A. The department will deliver protective services to adults living in unlicensed community settings through the Office of Aging and Adult Services, Division of Adult Protective Services

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:437 (April 1994), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17121. Responsibilities of Regional Coordinating Councils

A. The Office of Aging and Adult Services, Division of Adult Protective Services shall convene and participate in Regional Coordinating Councils in each region of the state to coordinate community services in support of individuals in need of protection.

B. These Councils will have as their objective to achieve maximum community coordination by efforts to:

1. identify resources, both in common to the agencies represented and available from outside resources; and

2. increase availability of needed services by maximizing existing resources and decreasing duplication of effort;

3. assure maximum community coordination of effort in providing necessary services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511.

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:438 (April 1994), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17123. Training

A. To encourage prompt reporting of suspected abuse, neglect, exploitation, or extortion, Adult Protective Services staff shall provide for and/or participate in activities to inform the general public and, in particular, targeted professionals and service providers about the Adult Protective Service Program.

B. The adult protection agency shall also be responsible for ongoing inservice training for its staff which assures adequate performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:438 (April 1994), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

§17125. Dissemination

A. A copy of this Rule shall be made available to anyone, including individuals in need of protection, upon request.

B. Copies of this Rule shall be disseminated to state and local agencies which serve populations of persons with mental, physical, or emotional disabilities (including but not limited to community services offices of the Office for Citizens with Developmental disabilities, Office of Mental Health, Office of Addictive Disorders, Office of Public Health and state and local law enforcement agencies, advocacy agencies, nursing homes, hospitals, private care agencies, and other related service agencies).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 14:403.2 and R.S. 15:1501-15:1511

HISTORICAL NOTE: Promulgated by the Department of health and Hospitals, Office of the Secretary, Bureau of Protective Services LR 20:438 (April 1994), amended by the Office of Aging and Adult Services, Division of Adult Protective Services, LR 36:

Interested persons may submit written comments to Hugh Eley, Office of Aging and Adult Services, P.O. Box 2031, Baton Rouge, LA 70821-2031. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for December 30, 2009 at 10:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested individuals 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.

Alan Levine
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Adult Protective Services**

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

This rule proposes to repeal and repromulgate LAC 48:I.17101-17125, to adopt technical changes to the Adult Protective Services program required by the enactment of R.S. 15:1501-1511 in the 2008 Regular Session of the Louisiana Legislature. The rule also adopts administrative changes made within the Department of Health and Hospitals to reflect the transfer of the Bureau of Protective Services into the Office of Aging and Adult Services and the renaming of the agency to the Division of Adult Protective Services.

These changes do not affect current services offered through the Adult Protective Services program and therefore are not anticipated to result in any additional savings or costs, other than the cost of promulgation of the rule in the amount of \$2,050 (SGF) in FY 09-10. This cost is routinely included in the agency's budget.

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

There is no known 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 known cost and/or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will have no effect on competition and employment.

Hugh Eley
Assistant Secretary
0911#096

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

Louisiana Risk Review Panels
(LAC 22:I.107)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the contents of Section 107 Louisiana Risk Review Panels.

The full text of this Notice of Intent can be found in the Emergency Rule section of this *Louisiana Register*.

Family Impact Statement

Amendment to the current Rule has no known impact on family formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Written comments may be addressed to Melissa Callahan, Deputy Assistant Secretary, Department of Public Safety and Corrections, P. O. Box 94304, Baton Rouge, LA 70804 until 4:30 p.m. on December 9, 2009.

James M. Le Blanc
Secretary

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

RULE TITLE: Louisiana Risk Review Panels

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

The proposed rule change, which allows offenders to become eligible for parole after serving half of their prison sentence, could result in a decrease of incarceration costs due to early releases of offenders associated with the Louisiana Risk Review Panel. It is indeterminable how many offenders would be released as a result of this rule change. However, the potential costs savings for every offender released would be \$24.39 per offender per day or \$8,902 annually for offenders housed at the local level. Currently, there are 6,411 offenders with an average sentence length of 6.72 years who have served an average of 1.66 years and whose only offense is under the Uniformed Controlled Dangerous Substances Law. Of these offenders, there are 268 offenders that have an average sentence length of 4.93 years and have served an average of 3.2 years. Therefore, 268 additional offenders may be eligible for the Louisiana Risk Review Panel for serving at least half of their prison sentence. The potential cost savings may be offset with the back filling of vacated beds.

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

The proposed rule change will result in an increase in self-generated revenue to the extent that individuals become eligible for early release. Each individual who is released upon review by the Louisiana Risk Review Panel will pay a monthly parole fee of \$53. The amount of parole fees collected is indeterminable since it is not known how many offenders the Louisiana Risk Review Panel will release on parole. The current parole fee collection rate is 58%. There is also a one time \$65 processing fee that will be deposited into the Adult Probation and Parole Officer Retirement Fund.

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

For every offender released, there would be costs to affected persons for parole fees. However, there would be economic benefits to affected persons provided they are employed upon release.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change is anticipated to have a positive impact on employment when affected persons are employed upon release.

Thomas Bickham, III
Undersecretary
0911#108

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of State Police
Transportation and Environmental Safety Section**

Explosives Code
(LAC 55:I.Chapter 15)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq. and 40:1472.1 et seq., gives notice of its intent to amend its rules regulating explosives to provide for needed definition changes, to remove the requirement for fingerprint cards unless requested, to provide for license numbers to be die stenciled on magazines, to reduce the number of hours of refresher training for handlers, and to specify requirements for explosives course instructors.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 15. Explosives Code

Subchapter A. General

§1501. Scope of Rules and Regulations

A. ...

B. These rules and regulations shall not apply to the transportation of explosives or blasting agents when under the jurisdiction of and in compliance with the regulations of the U.S. Department of Transportation, and the regulations of the United States Coast Guard.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections,

Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), amended by the Department of Public Safety and Corrections, Office of State Police, LR 26:90 (January 2000), LR 36:

§1503. Definitions

* * *

Blaster—any person employed by a primary licensee who detonates or otherwise effects the explosion of an explosive by loading, arming or firing an explosive or who is in immediate personal charge and supervision of one or more other persons engaged in such activity.

* * *

Handler—a person who touches, moves, or otherwise handles explosives but does not detonate or otherwise effect the explosion of explosives by loading, arming or firing the explosive. The license issued to a handler shall not be used by a blaster or user who uses explosives as an ultimate consumer. However, an individual with a blaster's license may engage in the activities of a handler without a handler's license.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), amended by the Department of Public Safety and Corrections, Office of State Police, LR 26:90 (January 2000), amended LR 34:2674 (December 2008), LR 36:

§1505. General Administrative Requirements

A. - C. ...

D. No person or business shall possess, keep, store, sell, or offer for sale, give away, use, transport, or dispose of, or otherwise handle in any manner any explosive or blasting agent except in conformity with the provisions of R.S. 40:1472.2 et seq. Nothing in this Subsection shall be so construed as to prevent hand-loaders of ammunition from giving small quantities of black powder or smokeless propellant to one another in quantities of 1 pound or less.

E.

F. Prior to the sale of any explosives, manufacturers and dealer-distributors are to possess a copy of the purchasing company's current explosives license. Manufacturers and dealer/distributors shall be required to retain copies of sales of explosives for a period of not less than 24 months. These sale slips or invoices must be legible, correct and complete.

G. - I. ...

J. Each manufacturer, dealer-distributor, user, blaster, or handler shall possess a valid and subsisting license issued by the Office of the Deputy Secretary of Public Safety Services, in accordance with the provisions of R.S. 40:1472.1 through 40:1472.19. If requested by the deputy secretary, applicants for a license shall submit with their application two complete, legible, and classifiable FBI applicant fingerprint cards taken by a person employed by a law enforcement agency who is appropriately trained in recording fingerprints. Cost incurred by the department for processing, Louisiana State Police and Federal Bureau of Investigation fingerprint cards shall be borne by the applicant.

K. - K.1. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), amended by the Department of Public Safety and Corrections, Office of State Police, LR 34:2674 (December 2008), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 35:491 (March 2009), LR 36:

§1509. General Storage Requirements

A. All explosives, including black powder in excess of 5 pounds, except when preempted by federal or state regulations, shall be kept in magazines which meet the requirements of these rules and regulations. Blasting agents shall be stored in accordance with the requirements set forth in §1515. Storage of explosives in underground mining operations is exempt from the rules and regulations set forth in this Section, but must comply with all applicable federal regulations set forth in 30 CFR Part 57. Underground mine storage will provide all adequate safety and security procedures necessary to ensure that unlicensed personnel will not have access to the explosives. Such security must be approved by the Deputy Secretary of Public Safety Services.

B. - N. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), amended by the Department of Public Safety and Corrections, Office of State Police, LR 26:91 (January 2000), LR 36:

§1511. Magazine Construction Requirements

A. - C. ...

1. The license number assigned by the Louisiana Department of Public Safety, Explosive Control Unit, for that specific magazine will be permanently inscribed, welded, or otherwise permanently affixed to one hood covering a lock on each indoor and outdoor magazine; does not apply to Type 3 magazines. The letters and numbers shall be at least 1/4" in height die stenciled, welded or engraved in a manner that is clear, legible and permanent.

D. - I.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:105 (January 1998), amended by the Department of Public Safety and Corrections, Office of State Police, LR 26:91 (January 2000), LR 34:1037 (June 2008), LR 34:2675 (December 2008), LR 36:

§1521. General Transportation Requirements

A. - B. ...

C. No licensee or an agent thereof shall smoke, carry matches or any other flame producing device, or carry firearms or loaded cartridges while in a conveyance

transporting explosives. Nothing in this Subsection shall be so construed as to prevent the presence of a duly authorized and legally constituted armed guard on such conveyances where security considerations dictate their necessity to possess or carry a firearm.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Filed by the Department of Public Safety, Office of State Police, at the Office of the State Register, 1974, promulgated and amended LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 36:

§1541. Training

A. ...

1. All blaster, user, manufacturer and or dealer distributor licensees shall attend a minimum of 4 hours of annual refresher training utilizing any combination of classroom or hands on practice, in the use of explosives to include updates in §1541.D.6 and explosive safety procedures.

2. All explosive handler licensees shall attend a minimum of 4 hours of annual refresher training to include topics covered in §1541.E.2 and §1541.E.3.

B. - B.2. ...

C. Course instructors shall show documented proof of his or her knowledge, experience, and training in the field of explosives being taught as set forth in Subparagraph 1 below. Course instructors shall possess a current Louisiana Explosives' License in one of the following classes: blaster, user, manufacturer and or dealer distributor. In addition, instructors shall also be cleared by the Bureau of Alcohol, Tobacco, Firearms and Explosives as an Employee Possessor or Responsible Person for an ATF licensee or permittee. That license or permit is to relate to the field of instruction.

1. Instructor Qualifications. Qualification for instructors are as follows:

a. each instructor shall have a minimum of three years documented practical and/or field experience as a blaster, user, manufacturer and or dealer distributor or combination thereof;

b. written documentation shall include, but is not limited to, verifiable employment records, written job descriptions, certificates of training in the use and handling of explosives, or licensure by a governmental entity to use, handle, detonate or otherwise initiate explosives in its respective jurisdiction;

c. each instructor shall have a minimum of two years documented experience in a classroom environment, or other similar educational setting, as an instructor or educator. Written documentation shall include but is not limited to:

- i. course curriculums;
- ii. student rosters;
- iii. copies of student certificates; and
- iv. instructor development course certificates;

d. in the absence of any of the documentation required in Subparagraphs b and c of this Subsection, an applicant to be an instructor shall submit a notarized affidavit detailing his educational and practical experience

which he believes meets the minimum qualifications specified above to be an instructor. Upon evaluation and acceptance by the deputy secretary, the applicant may be approved as an instructor in the area or areas that he is qualified to instruct; and

e. upon evaluation and acceptance by the deputy secretary, an applicant certified by the Mining Safety and Health Administration (MSHA) as an instructor in the field of explosives shall be determined suitable as an instructor pursuant to these rules limited to the field of underground mining.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:106 (January 1998), amended by the Department of Public Safety and Corrections, Office of State Police, LR 34:2676 (December 2008), LR 36:

§1543. Drug Testing Requirements

A. - C. ...

D. All holders of Louisiana Explosives Licenses shall be drug-screened within 72 hours of employment or initial application for, or renewal of, an explosives license. The drug testing required by this Paragraph shall meet the same testing standards as tests required by Subsection A of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1472.1 et seq.

HISTORICAL NOTE: Adopted by the Department of Public Safety, Office of State Police, at the Office of State Police, 1974, amended and promulgated LR 10:803 (October 1984), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, Explosive Control Unit, LR 22:1230 (December 1996), LR 24:106 (January 1998), amended by the Department of Public Safety and Corrections, Office of State Police, LR 34:2677 (December 2008), amended by the Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, LR 35:491 (March 2009), LR 36:

Public Comments

Interested persons may submit written comments to: Department of Public Safety, Office of Legal Affairs, c/o Paul Schexnayder, Post Office Box 66614, Baton Rouge, LA 70896. Written comments will be accepted through December 15, 2009.

Jill Boudreaux
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Explosives Code

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

The proposed changes include definition changes, remove the requirement for fingerprint cards unless requested, provide for license numbers to be die stencilled on magazines, reduce the number of hours of refresher training for handlers, and specify requirements for explosives course instructors, all of which will have no implementation costs or savings to

- Louisiana State Police or other state or local governmental entities.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 There should be no impact on state or local governmental revenues as a result of these proposed rule changes.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
 These rule changes will result in a savings for those explosives license applicants who are not required to submit fingerprint cards at the time of application and for handlers of explosives who will only have to attend four hours of refresher training instead of the eight hours currently required.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
 The proposed rule changes should not affect competition or employment.

Jill Boudreaux
 Undersecretary
 0911#106

Robert E. Hosse
 Staff Director
 Legislative Fiscal Office

NOTICE OF INTENT
Department of Revenue
Policy Services Division

Extension of Time to File; Waiver of Interest
 (LAC 61:I.1701)

Under the authority of R.S. 47:1511, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to repeal LAC 61:I.1701, which set forth the reasons for which the time to extend the filing of an inheritance and estate transfer tax return could be granted and for which interest could be waived.

Act 822 of 2008 repealed the inheritance tax law comprised of R.S. 47:2401 through 47:2426 in its entirety, effective January 1, 2010.

In accordance with R.S. 49:965.6, the Department of Revenue has conducted a Regulatory Flexibility Analysis and found that the proposed repeal of this Rule will have negligible impact on small businesses.

Title 61
REVENUE AND TAXATION
Part I. Taxes Collected and Administered by the Secretary of Revenue
Chapter 17. Inheritance and Estate Transfer Tax
§1701. Extension of Time to File; Waiver of Interest

Repealed.
 AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2420.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Income and Corporation Franchise Taxes Division, LR 22:1141 (November 1996), repealed by the Department of Revenue, Policy Services Division, LR 36:

Family Impact Statement

This proposed amendment to LAC 61:I.1701 should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D).

1. The effect on the stability of the family.
 Implementation of this proposed rule will have no 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.
 Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The effect on the functioning of the family.
 Implementation of this proposed rule will have no effect on the functioning of the family.
4. The effect on family earnings and family budget.
 Implementation of this proposed rule will have no effect on family earnings and family budget.
5. The effect on the behavior and personal responsibility of children.
 Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.
6. The ability of the family or a local government to perform the function as contained in the proposed rule.
 Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Public Comments

Interested persons may submit data, views, or arguments, in writing to Leonore Heavey, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, December 29, 2009. A public hearing will be held on Wednesday, December 30, 2009, at 9:30 a.m. in the River Room Conference Room on the 7th Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
 Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Extension of Time to File;
Waiver of Interest

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 The proposed rule change will have no impact on expenses of state or local government. However, the rule change will allow the reallocation of some resources and staff used in the processing of inheritance taxes to other tax processing activities.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
 State and local revenue could decrease by an indeterminable amount due to making the acquisition of fingerprint cards for explosives licenses subject to state police discretion rather than mandatory.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)
 Taxpayers are no longer required to file inheritance tax returns for deaths after June 30, 2004. Under Act 822 of 2008 all taxes due for returns filed for deaths after July 1, 2004 have prescribed. All taxes due for deaths before June 30, 2004, for which a return has not been filed, will prescribe December 31, 2011. The proposed rule repeal simply removes options for filing extensions and interest waivers, which are irrelevant to the current program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed repeal will not affect competition or employment.

Jill Boudreaux
Undersecretary
0911#066

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Sheriffs' Pension and Relief Fund

Court Order or Judgment
(LAC 58:XV.101)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., please take notice that the Louisiana Sheriffs' Pension and Relief Fund (the "Fund") intends to adopt a Rule pursuant to R.S.11:291(B), clarifying the circumstances under which notice is deemed to be received by the Fund for purposes of that statute. The statute specifically authorizes the adoption of rules by the boards and agencies affected by the statute and the proposed Rule is issued in accordance with this statutory authorization.

Title 58

RETIREMENT

Part XV. Sheriffs' Pension and Relief Fund

Chapter 1. General Provisions

§101. Court Order or Judgment

A. To be effective as to the Louisiana Sheriffs' Pension and Relief Fund, any court order or judgment issued upon or after the termination of a community property regime which order or judgment recognizes the community interest of a spouse or a former spouse of a member or retiree of the Louisiana Sheriffs' Pension and Relief Fund and provides that a benefit or return of employee contributions be divided by the Louisiana Sheriffs' Pension and Relief Fund with the spouse or former spouse, shall be:

1. considered to be received by the Louisiana Sheriffs' Pension and Relief Fund under R.S. 11:291(B) only if a certified copy of the order is served on the Executive Director or Assistant Executive Director of the Fund by the Sheriff of East Baton Rouge Parish; and

2. specific to the Louisiana Sheriffs' Pension and Relief Fund.

B. A court order purporting to divide a member's or retiree's benefits and/or employee contributions between the member/retiree and former spouse that does not specifically identify the Louisiana Sheriff's Pension and Relief Fund by name shall not be effective as to said Fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:291(B).

HISTORICAL NOTE: Promulgated by the Louisiana Sheriff's Pension and Relief Fund, LR 36:

Family Impact Statement

The Rule is not expected to have a negative fiscal impact or to have any impact on family formation, stability and autonomy.

Public Comments

Inquiries and comments concerning the proposed Rule should be directed to Keith Duplechain, Deputy Executive Director of the Fund. The office hours of the Fund for

purposes of receiving comments and responding to inquiries are 9:00 a.m. until 3:00 p.m., Monday through Friday, excepting state holidays. The Fund's office is located at 1225 Nicholson Drive, Baton Rouge, LA 70802. Inquiries and comments may also be submitted by fax to (225) 219-0521. Telephone inquiries and comments are not accepted.

Osey McGee, Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Court Order or Judgment

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

There is no estimated implementation cost or savings to state or local governmental units. The proposed rule requires certified copies of court orders that divide a member or retiree's benefits and/or employee contributions between the member or retiree and the former spouse be served by the East Baton Rouge Parish Sheriff on the executive director or assistant executive director of the Louisiana Sheriffs' Pension and Relief Fund.

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

The Proposed rule is estimated to generate \$554.88 annually for the East Baton Rouge Sheriffs' office. Based on historical data, it is estimated that 24 court orders or judgements will be served annually at a cost of \$23.12.

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

Persons requesting implementation of a court order that divides a former spouse's benefits or employee contributions will pay a \$23.12 fee to the East Baton Rouge Parish Sheriffs' Office to have certified copies of the court order delivered to the executive director or assistant executive director of the Louisiana Sheriff's Pension and Relief Fund.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment.

Osey McGee
Jr. Executive Director
0911#064

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Community Services**

Residential Licensing
(LAC 67:V.6115, 6709, 2903, 6905,
6909, 6953, 6955, and 6959)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Department of Social Services (DSS), Office of Community Services (OCS), intends to amend LAC 67:V, Subpart 8, Residential Licensing in order to carry into effect the provisions of Acts 194 and 343 of the 2009 Regular Session of the Louisiana Legislature.

Acts 2009, No. 194 amended the provisions of the Child Care Facilities and Child-Placing Agencies Licensing Act to give the DSS authority to enact regulations and to revoke or

deny licenses to operate child care facilities. It further transferred sole authority over rule-making and decisions to deny or revoke a child care facility license from external committees to the DSS and shortens the time during which a center may remain open following revocation. This proposed Rule conforms the revocation, denial and appeal provisions with existing statutory law and allows the department to exercise the authority granted it by the Legislature.

Acts 2009, No. 343 directed the department to provide current information on influenza, including known risks of the various strains of the disease and the risks and benefits of immunization, to parents of children in child care facilities, including child residential care facilities. This proposed Rule conforms the child residential regulations with existing statutory law and provides for the provision of influenza information to parents and guardians of children in out-of-home care as mandated by Act 343.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 8. Residential Licensing

Chapter 61. Emergency Shelter

§6115. Required Records

NOTE: This Section has been moved from LAC 67:I.1115.

A. - D.4.a. ...

5. Influenza Notice to Parents. In accordance with Act 343 of the 2009 regular legislative session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1st of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2677 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1552 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

Chapter 67. Maternity Homes

§6709. Organization and Administration

NOTE: This Section has been moved from LAC 67:I.1709.

A. - G.2. ...

H. Influenza Notice to Parents. In accordance with Act 343 of the 2009 regular legislative session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information

and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1571 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

Chapter 69. Child Residential Care

§6903. Authority

NOTE: This Section has been moved from LAC 67:I.1903.

A. - C.3. ...

D. Waivers. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard upon determination that the economic impact is sufficiently great to make compliance impractical, only if the health, safety, and well-being of the staff/children are not imperiled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2129 (November 1998), LR 25:2458 (December 1999), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2698 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1574 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6905. Procedures

NOTE: This Section has been moved from LAC 67:I.1905.

A. - E.1. ...

2. The administrator or owner may appeal this decision by submitting a written request with the reasons to the secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, P.O. Box 2994, Baton Rouge, LA 70821-9118. This written request shall be postmarked within 15 days of the receipt of the notification in §1905.E.1 above, in the case of a revocation or non-renewal, or within 30 days of denial of a new application.

3 - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2130 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2699 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1575 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6909. Administration and Organization

NOTE: This Section has been moved from LAC 67:1.1909.

A - P.3. ...

Q. Influenza Notice to Parents. In accordance with Act 343 of the 2009 regular legislative session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2132 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2701 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1578 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6953. Authority

NOTE: This Section has been moved from LAC 67:1.1953.

A. Legislative Provisions. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq., and R.S. 46:51 which mandate the licensing of all child care facilities and child placing agencies, including child residential facilities. A Class "B" child residential facility is defined as any place, facility or home operated by any institution, society, agency, corporation, person or persons or any other group to provide full-time care (24-hour residential care) for four or more children under the age of 18 years who are not related to the operators, and whose parents or guardians are not residents of the same facility, with or without transfer of custody, and no state or federal funds received for the care of the children.

B - C.3. ...

D. - D.2. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6955. Procedures

NOTE: This Section has been moved from LAC 67:1.1955.

A - D.2.g. ...

E. Appeal Procedure

1. If a license is denied or revoked because a facility does not meet the minimum requirements for licensure, the Department of Social Services shall notify the licensee or

applicant in writing of the denial or revocation, of the reasons for the denial or revocation, and of the right to appeal the agency action.

2. The administrator or owner may appeal this decision by submitting a written request for a fair hearing, together with the reasons he/she believes the decision to be incorrect, to the Department of Social Services Appeals Bureau, P.O. Box 2994, Baton Rouge, LA 70821. The written request must be submitted within fifteen (15) days of receipt of notice of the department's notice, in the case of a revocation or non-renewal, or within thirty (30) days of receipt of the notice of denial of a new application for an initial license.

3. A fair hearing shall be conducted by an administrative law judge within thirty (30) days of filing the request for hearing.

4. Following the hearing, the administrative law judge shall render a decision within 90 days and shall notify the appellant in writing of the decision, either affirming or reversing the department's original action. If the department's action is upheld, the revocation or denial shall be effective immediately.

5. If a facility continues to operate without a license following a decision upholding revocation the Department may file suit in the district court in the parish in which the facility is located seeking injunctive relief and statutory fines of not less than \$75 per day nor more than \$250 per day for each day the facility has operated without a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

§6959. Administration and Organization

NOTE: This Section has been moved from LAC 67:1.1959.

A. Class "B" facilities must comply with all regulations set by the Office of the State Fire Marshal, the Office of Public Health, local zoning laws and all laws regarding child abuse or neglect. Client-staff ratios and minimum space requirements will be enforced by the Department of Social Services. Class "B" facilities must comply with regulations restricting hiring felons, prohibiting racial discrimination and prohibiting the use of corporal punishment without parental permission, and with all other regulations promulgated by the Department of Social Services. Core regulations must promote safe physical facilities, adequate supervision and qualified staff, healthful food service, procedures for nighttime care, and procedures for the disposition of complaints.

B. - B.2. ...

3. Repealed.

C - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 27:1567 (September 2001), re-promulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2743 (December 2007), repromulgated by the

Department of Social Services, Office of Community Services, LR 35:1620 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:

Family Impact Statement

The impact of the proposed Rule on the family formation, stability, and autonomy has been considered. It is estimated that the proposed action will have no impact on the family.

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.

Public Hearing

A public hearing will be held on December 29, 2009 at 11:00 am at 627 N. Fourth Street, Iberville Building, Room 1-127, Baton Rouge, LA, to receive comments on this proposed Rule. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing at said hearing.

Public Comments

Written comments should be sent to Kaaren Hebert, Assistant Secretary, at P.O. Box 3318 Baton Rouge, LA 70821, and must be received no later than the close of business on Friday, January 8, 2010. 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 (225) 342-4120 (Voice and TDD).

Kristy H. Nichols
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Residential Licensing

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

This rule proposes to amend the Louisiana Administrative Code Title 67, Part V, Subpart 8, Residential Licensing to implement the provisions of Acts 194 and 343 of the 2009 Regular Legislative Session.

Act 194 of the 2009 Regular Legislative Session abolishes the Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies (Class A Committee) and the Louisiana Committee on Private Child Care (Class B Committee). This rule deletes all references to the committees that were abolished under this Act. There is no cost associated with this change.

Act 343 of the 2009 Regular Legislative Session required the Department of Health and Hospitals (DHH) to develop and provide information on influenza to the Department of Social Services (DSS) and required DSS to provide this information to licensed child care residential facilities. DHH provided one copy of a four-page document to DSS on influenza at some negligible cost. DSS utilized the Office of State Printing to print and mail this document along with other influenza materials to 145 residential child care facilities at an estimated cost of \$189 (145 X \$1.30). This one-time cost was paid for with H1N1 federal grant funds received as Interagency Transfers from the Department of Health and Hospitals, Office of Public Health in FY 2009-10.

The only other cost associated with this rule is for publishing rulemaking, which is estimated to be \$656 (\$328

SGF; \$328 Federal). This one-time cost is included in the agency's budget.

The total cost to implement these rule changes for FY 10 is \$845 (\$328 SGF; \$189 IAT; \$328 Federal). The only potential cost in subsequent fiscal years is the cost for DSS to provide updated information on influenza to providers. To alleviate this cost, the information will be provided on the department's website and DSS will notify providers via email when this information is available.

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

This rule will have no effect on revenue collections of state or local governmental units.

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

Act 343 may result in some negligible cost to child care providers to print updated information on influenza from DSS website. There is no cost associated with the distribution of materials to parents because the providers are only required to post the information in a common and conspicuous location within the residential facility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule should have no impact on competition and employment.

Kaaren Hebert
Assistant Secretary
0911#103

Robert E. Hosse
Staff Director
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Social Services Office of Community Services and Office of Family Support

Residential Licensing—Disqualification
(LAC 48: I Chapter 88 and
LAC 67:III.Chapter 73, and V.Chapters 61-19)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Department of Social Services (DSS), Office of Family Support (OFS) and Office of Community Services (OCS), intends to promulgate rules in the *Louisiana Administrative Code* (LAC) Title 48, Part I, Subpart 3, Chapter 88, Adult Residential Care Licensing, Title 67, Part III, Subpart 21, Chapter 73, Child Day Care Licensing, and LAC Title 67, Part V, Subpart 8, Chapters 61-69, Residential Licensing pursuant to the general rule-making authority of the department under R.S. 46:51 and the specific rule-making authority over child care facilities and child placing agencies granted by the Child Care Facility and Child-Placing Agency Licensing Act, R.S. 46:1401-1426, and the specific authority to create rules for transitional living granted by the Transitional Youth Residence Act, La. R.S. 46:1451-1455.

State licensing regulations for child care facilities provided no disqualification period for licensees who have had a prior license revoked for failure to comply with State laws and regulations governing facilities providing out-of-home care for children and elderly or infirmed adults. This lack of specific disqualification periods had allowed substandard facilities to take temporary remedial action and reapply for a new license immediately following revocation

of the previous one. To ensure the health, safety, and/or welfare of Louisiana children and elderly or infirmed adults who are placed in out-of-home child care or residential settings, an Emergency Rule was published effective September 4, 2009, to enact a two year licensure application disqualification period for those child care and residential facilities licensed by DSS that have had a license revoked, voluntarily surrendered or not renewed for failing to comply with state laws and licensing regulations. This Notice of Intent is being published to initiate the rulemaking process to effect a final Rule.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Information

Subpart 3. Licensing and Certification

Chapter 88. Adult Residential Care Home

§8807. Denial, Revocation or Nonrenewal of License, Appeal Procedure

A. - D.3.

E. Disqualification from Application

1. Definitions, as used in this Section:

Affiliate—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

v. director of any such.

Department—the Department of Social Services.

Disqualification Period—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

Provider—all owners or operators of a facility, including the director of such facility. If the owner is a

corporate entity the owners are the officers, directors, and shareholders of the facility.

Unlicensed Operation—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the Secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2328 (December 1998), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter A. Licensing Class "A"

§7303. Procedures

A. - F.7. ...

G. Disqualification from application

1. Definitions, as used in this Section:

Affiliate—

i with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which

that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or,

v. director of any such.

Department—the Department of Social Services.

Disqualification Period—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date —of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

Provider—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Unlicensed Operation—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this Rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent

application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

§7359. Procedures

A. - H. ...

I. Disqualification from Application

1. Definitions, as used in this Section:

Affiliate—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or,

v. director of any such.

Department—the Department of Social Services.

Disqualification Period—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

Provider—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Unlicensed Operation—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this Rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 September 1992, LR 26:1636 (August 2000), repromulgated by the Office of Family Support, LR 33:2771 (December 2007), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

Part V. Community Services

Chapter 61. Emergency Shelter

§6103. Organization and Administration

A. - C. 3.a. ...

D. Disqualification from Application

a. Definitions, as used in this Section:

Affiliate—

- i. with respect to a partnership, each partner thereof;
- ii. with respect to a corporation, each officer, director and stockholder thereof;
- iii. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or

v. director of any such.

Department—the Department of Social Services

Disqualification Period—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

Provider—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Unlicensed Operation—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this Rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2669 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1544 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

Chapter 65. Transitional Living

§6507. Application for Licensure

A. - E. ...

F. Disqualification from application

1. Definitions, as used in this Section:

Affiliate—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or,

v. director of any such.

Department—the Department of Social Services.

Disqualification Period—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

Provider—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Unlicensed Operation—operation of any child care facility or child-placing agency, adult residential care

facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the Secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1451-1455

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Bureau of Licensing, LR 30:93 (January 2004), repromulgated by the Department of Social Services, Office of Community Services, Bureau of Residential Licensing, LR 33:2686 (December 2007), repromulgated by the LR 35:1544 (August 2009), amended by the Department of Social Services, Office of Community Services, LR 35:1561 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

Chapter 67. Maternity Homes

§6703. Definitions

A. ...

B. Disqualification from application

1. Definitions, as used in this Section:

Affiliate—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person,

natural or juridical acting at the direction of or on behalf of the licensee or applicant; or,

v. director of any such.

Department—the Department of Social Services.

Disqualification Period—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

Provider—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Unlicensed Operation—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this Rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1427

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2694 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1570 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

Chapter 69. Child Residential Care

§6905. Procedures

A. - E.5.

F. Disqualification from Application

1. Definitions, as used in this Section:

Affiliate—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or,

v. director of any such.

Department—the Department of Social Services.

Disqualification Period—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

Provider—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Unlicensed Operation—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:477 and R.S. 46:1401-1426.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:2130 (November 1998), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2699 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1575 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

§6955. Procedures

A. - E. 5.

F. Disqualification from Application

1. Definitions, as used in this Section:

Affiliate—

i. with respect to a partnership, each partner thereof;

ii. with respect to a corporation, each officer, director and stockholder thereof;

iii. with respect to a natural person, that person and any individual related by blood, marriage, or adoption within the third degree of kinship to that person; any partnership, together with any or all its partners, in which that person is a partner; and any corporation in which that person an officer, director or stockholder, or holds, directly or indirectly, a controlling interest;

iv. with respect to any of the above, any mandatory, agent, or representative or any other person, natural or juridical acting at the direction of or on behalf of the licensee or applicant; or,

v. director of any such.

Department—the Department of Social Services.

Disqualification Period—the prescriptive period during which the department shall not accept an application from a provider. Any unlicensed operation during the disqualification period shall interrupt running of prescription until the department has verified that the unlicensed operation has ceased.

Effective Date—of a revocation, denial, or non-renewal of a license shall be the last day for applying to appeal the action, if the action is not appealed.

Facility—any place, program, facility or agency operated or required by law to operate under a license, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency.

License—any license issued by the department to operate any child care facility or child-placing agency as defined in R.S. 46:1403; any license issued by the department to operate any adult residential care facility as defined in R.S. 40:2153; or any license issued by the department to operate any transitional youth residence as defined in R.S. 46:1453.

Provider—all owners or operators of a facility, including the director of such facility. If the owner is a corporate entity the owners are the officers, directors, and shareholders of the facility.

Unlicensed Operation—operation of any child care facility or child-placing agency, adult residential care facility, or transitional youth residence, at any location, without a valid, current license issued by the department.

2. Disqualification of Facility and Provider

a. If a facility's license is revoked or not renewed due to failure to comply with state statutes and licensing rules, the department shall not accept a subsequent application from the provider for that facility or any new facility for a minimum period of two years after the effective date of revocation or non-renewal or a minimum period of two years after all appeal rights have been exhausted, whichever is later (the disqualification period). Any subsequent application for a license shall be reviewed by the secretary or her designee prior to a decision being made to grant a license. The department reserves the right to determine, at its sole discretion, whether to issue any subsequent license.

b. Any voluntary surrender of a license by a facility facing the possibility of adverse action against its license (revocation or non-renewal) shall be deemed to be a revocation for purposes of this Rule, and shall trigger the same disqualification period as if the license had actually been revoked.

c. In addition, if the applicant has had a substantial history of non-compliance, including but not limited to revocation of a previous license, operation without a license, or denial of one or more previous applications for licensure, the department may refuse to accept a subsequent application from that applicant for a minimum period of two years after the effective date of denial.

d. The disqualification period provided in this Section shall include any affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR

27:1565 (September 2001), repromulgated by the Department of Social Services, Office of the Secretary, Bureau of Residential Licensing, LR 33:2740 (December 2007), repromulgated by the Department of Social Services, Office of Community Services, LR 35:1617 (August 2009), amended by the Department of Social Services, Office of Community Services and Office of Family Support, LR 36:

Family Impact Statement

The impact of the proposed Rule on the family formation, stability, and autonomy has been considered. It is estimated that the proposed action will have no impact on the family.

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.

Public Hearing

A public hearing will be held on December 29, 2009 at 10:00 am at 627 N. Fourth Street, Iberville Building, Room 1-127, Baton Rouge, LA, to receive comments on this proposed Rule. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing at said hearing.

Public Comments

Written comments should be sent to Kaaren Hebert, Assistant Secretary, at P. O. Box 3318 Baton Rouge, LA 70821, and must be received no later than the close of business on Friday, January 8, 2010. 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 (225) 342-4120 (Voice and TDD).

Kristy H. Nichols
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Residential Licensing—Disqualification

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

This rule proposes to amend the Louisiana Administrative Code Title 48, Part I, Subpart 3, Chapter 88, Adult Residential Care Licensing, Title 67, Part III, Subpart 21, and LAC Title 67, Part V, Subpart 8, Chapters 61-69, Residential Licensing to establish a two-year disqualification period for licensees of adult residential care homes, day care services, and child residential services who have had a prior license revoked, not renewed, or voluntarily surrendered for failure to comply with state laws and regulations. The disqualification period begins after the effective date of revocation or non-renewal or after all appeal rights have been exhausted, whichever is later. This rule ensures the health, safety, and welfare of Louisiana children and elderly by preventing substandard facilities from applying for a new license immediately following the revocation of the previous license.

The only cost associated with this rule is the cost of publishing rulemaking, which is estimated to be \$656 (\$328 State General Funds; \$328 Federal Funds). This one-time cost is routinely included in the agency's budget.

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

DSS estimates that as a result of this rule less than 1% of these facilities will be closed, which will result in some

minimum impact on Self-generated revenues collected by the Office of Family Support and the Office of Community Services for annual license fees. The amount of this impact cannot be determined because of the uncertainty of the number of facilities that will be closed or the licensed capacity of these facilities, which determines the amount of the fee ranging from \$25 to \$250.

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

This rule will prevent licensees of these facilities from operating for a period of two years upon revocation or non-renewal of their license for non-compliance, which will cease their ability to generate income from providing these services. DSS cannot determine the amount of financial impact this rule will have on these providers as it would depend upon their licensed capacity, the number of part-time and/or full-time individuals that they actually cared for, and the rates that they charge for care.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no impact on competition and employment.

Kaaren Hebert
Assistant Secretary
0911#105

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

Child Daycare Services
Child Care Quality Rating System
(LAC 67:III 5121, 7302, 7303,
7305, 7355, 7357, 7359, 7361)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Department of Social Services, Office of Family Support, intends to amend rules in the Louisiana Administrative Code, Title 67, Part III Subpart 12, Child Care Assistance Program, and Title 67, Part III Subchapter 21, Child Care Licensing, to comply with Acts 194, 351 and 343 of the 2009 Regular Session of the Louisiana Legislature.

Act 194 of the 2009 Regular Session transferred sole authority over rulemaking and decisions to deny or revoke a child care facility license from external committees to the Department of Social Services, makes uniform the requirements of licensure for all types of facilities, and shortens the time during which a center may remain open following revocation. It also requires creation of an Advisory Council on Child Care to advise the department on rulemaking for child day care facilities. Act 343 requires the department to provide current information on influenza, including known risks of the various strains of the disease and the risks and benefits of immunization, to parents of children in child care facilities, including child residential care facilities. Act 351 requires child day care facilities to make available to parents information on violations of the child care minimum standards at those facilities.

In this Notice of Intent LAC 67: III Chapter 51, Subchapters A, B and D will remain intact without amendment; Subchapter C will be amended and re-enacted to clarify that a quality star rating will be revoked if the

facility's license is revoked. LAC 67: Chapter 73 will be amended and reenacted to create the Advisory Council on Child Care and Early Education to comply with Act 194 and to remove references to the former Class A and Class B Committees abolished by that Act. It will also be amended to include notification to parents' requirements regarding licensing surveys and influenza outbreaks mandated by Acts 351 and 343 of the 2009 Regular Session.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

Subchapter C. Quality Start Child Care Quality Rating System

§5121. Participation

A. - C. ...

D. Centers that have achieved a Star Rating will have their rating revoked if the child care license is revoked.

E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2788 (December 2007), amended LR 34:2412 (November 2008), amended LR 36:

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter A. Licensing Class "A" Regulations for Child Care Centers

§7302. Authority

A. Legislative Provisions. The State of Louisiana, Department of Social Services, is charged with the responsibility for developing and publishing standards for the licensing of child care centers. The licensing authority of the Department of Social Services is established by R.S. 46:1401 et seq., making mandatory the licensing of all child care facilities and child placing agencies, including child care centers. Under R.S. 46:1403, a child *day care center* is defined as a place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least 12 1/2 hours in a continuous 7-day week. Additionally, related or relative is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

B. - C.3. ...

D. The Louisiana Advisory Council on Child Care and Early Education

1. The Louisiana Advisory Council on Child Care and Early Education is hereby created in accordance with R.S. 46:1414, as amended by Acts 2009, No. 194, to provide input and guidance to the Department of Social Services on matters pertaining to rules, regulations and standards for licensure of Class A and Class B day care centers as defined in R.S. 46:1403(A)(4).

2. The council shall be composed of 12 voting members, appointed by the Secretary of the Department of Social Services and 9 non-voting ex-officio members. The membership shall consist of:

a. one parent of a child currently enrolled in a licensed child care facility;

b. three owners or directors of licensed child care facilities in Louisiana, and one faith based child care provider;

c. two professionals and/or faculty of child development and/or early childhood education programs at community technical colleges or universities located in Louisiana;

d. one representative from each of the following advocacy organizations: the Louisiana Head Start Association, the Louisiana Partnership for Children and Families, the Louisiana Association for the Education of Young Children, the Child Care Association of Louisiana, and the Louisiana Early Childhood Association of Louisiana; and

e. nine non-voting ex-officio members consisting of one representative of each of the following offices or agencies: the Department of Education Pre-Kindergarten Program, the Department of Education Child and Adult Care Food Program, the Louisiana Office of State Fire Marshal, the Department of Health and Hospitals Office of Sanitarian Services, the Louisiana Workforce Commission, the Louisiana State Police Bureau of Criminal Identification, and three representatives from the Department of Social Services.

3. Members will be appointed to serve an initial two-year term on the Council and may be eligible to be reappointed to serve an additional two-year term.

4. A member shall be automatically removed from the advisory council if he/she has two or more unexcused absences during any 12-month period. An absence is excused for purposes of this Section when the cause is one which a reasonably-prudent person would deem to take precedence over fulfillment over a solemn public duty; or, if the absence is known in advance to be probable, if the member notifies the chairperson of his/her expected absence not less than twenty-four hours in advance of the scheduled meeting.

5. A quorum shall consist of a simple majority of the active voting members.

6. Whenever a vacancy occurs in any Council seat, whether by death, resignation, or automatic removal, such vacant seat shall no longer be counted as an active voting member in determining a quorum until a successor has been appointed by the secretary to fill the unexpired term.

7. Officers of the council shall include a chair, vice-chair and secretary.

8. All meetings shall be conducted in accordance with the state's Open Meetings Law. Procedural matters shall be conducted in accordance with the latest edition of Robert's Rules of Order.

9. Members shall serve without compensation or reimbursement.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1107 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2755 (December 2007), amended LR 36:

§7303. Procedures

A.- C.2. ...

3. If the survey reveals that the provider is not meeting minimum requirements, a decision may be made by the department for adverse action.

D. – E.1. ...

2. A provider may appeal the revocation or non-renewal of a license by submitting a written request to appeal the decision along with a copy of the notice within fifteen days of receipt of the notice of revocation or non-renewal. In the case of a denial of an initial application for a license, a provider may appeal the denial by submitting a written request to appeal the decision within 30 days of receipt of the notice of denial of application. A request for appeal should include the specific reasons the decision is believed to be erroneous and/or the specific reasons the decision is believed to be incorrect, and mailed to: Department of Social Services, Bureau of Appeals, P.O. Box 2944, Baton Rouge, LA 70821-9118.

E.3. – F.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1108 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2756 (December 2007), amended LR 36:

§7305. General Requirements

A.–K. ...

L. Licensing Surveys; Notice Requirements. In accordance with Act 351 of the 2009 Regular Legislative Session, providers shall prominently post information advising parents or guardians that findings from licensing surveys are available online which includes the current web address, and that findings from licensing surveys are also available upon written request to the Department of Social Services.

M. Influenza Notice to Parents. In accordance with Act 343 of the 2009 Regular Legislative Session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1112 (July 2003), repromulgated by the Department

of Social Services, Office of Family Support, LR 33:2760 (December 2007), amended LR 36:

Subpart 21. Child Care Licensing

Chapter 73. Day Care Centers

Subchapter B. Licensing Class “B” Regulations for Child Care Centers

§7355. Authority

A. The Louisiana Advisory Council on Child Care and Early Education

1. The Louisiana Advisory Council on Child Care and Early Education is hereby created in accordance with R.S. 46:1414, as amended by Acts 2009, No. 194, to provide input and guidance to the Department of Social Services on matters pertaining to rules, regulations and standards for licensure of Class A and Class B day care centers as defined in R.S. 46:1403(A)(4).

2. The council shall be composed of 12 voting members appointed by the Secretary of the Department of Social Services and 9 non-voting ex-officio members. The membership shall consist of:

a. one parent of a child currently enrolled in a licensed child care facility;

b. three owners or directors of licensed child care facilities in Louisiana, and one faith-based child care provider;

c. two professionals and/or faculty of child development and/or early childhood education programs at community technical colleges or universities located in Louisiana.

d. one representative from each of the following advocacy organizations:

i. the Louisiana Head Start Association, the Louisiana Partnership for Children and Families;

ii. the Louisiana Association for the Education of Young Children;

iii. the Child Care Association of Louisiana; and

iv. the Louisiana Early Childhood Association of Louisiana; and

e. nine non-voting ex-officio members consisting of one representative of each of the following offices or agencies:

i. the Department of Education Pre-Kindergarten Program;

ii. the Department of Education Child and Adult Care Food Program;

iii. Louisiana Office of State Fire Marshal;

iv. the Department of Health and Hospitals, Office of Sanitarian Services;

v. the Louisiana Workforce Commission;

the Louisiana State Police Bureau of Criminal Identification; and

vi. three representatives from the Department of Social Services.

3. Members will be appointed to serve an initial two-year term on the Council and may be eligible to be reappointed to serve an additional two-year term.

4. A member shall be automatically removed from the advisory council if he/she has two or more unexcused absences during any 12-month period. An absence is excused for purposes of this Section when the cause is one which a reasonably-prudent person would deem to take precedence over fulfillment over a solemn public duty; or, if

the absence is known in advance to be probable, if the member notifies the chairperson of his/her expected absence not less than 24 hours in advance of the scheduled meeting.

5. A quorum shall consist of a simple majority of the active voting members.

6. Whenever a vacancy occurs in any Council seat, whether by death, resignation, or automatic removal, such vacant seat shall no longer be counted as an active voting member in determining a quorum until a successor has been appointed by the secretary to fill the unexpired term.

7. Officers of the council shall include a chair, vice-chair and secretary.

8. All meetings shall be conducted in accordance with the state's Open Meetings law. Procedural matters shall be conducted in accordance with the latest edition of Robert's Rules of Order.

9. Members shall serve without compensation or reimbursement.

B. Penalties. The penalty for the operation of a center without a valid license is a fine of not less than \$75 and not more than \$250 for each day of operation without a license.

C. Injunctions. If any child care facility operates without a valid license issued by the department, the department may file suit in the district court in the parish in which the facility is located for injunctive relief. This injunctive order may include a temporary restraining order to restrain the institution, society, agency, corporation, person or persons, or any other group operating the child care facility from continuing the violation.

D. Inspections. It shall be the duty of the Department of Social Services, through its duly authorized agents, to inspect at regular intervals not to exceed one year or as deemed necessary by the department and without previous notice all child care facilities and child-placing agencies subject to the provisions of R.S. 46:1401 et seq. The facility shall be open to inspection at all times during working hours or when children are in care by the parents or legal guardians of children in care and by all authorized inspection personnel.

E. Waivers. The Secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical. These standards may be waived only if the health and well being of the staff and/or the children are not placed in danger.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1635 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended LR 36:

§7357. Definitions

A. The following are definitions of terms used in these minimum standards.

Bureau—Bureau of Licensing of the Louisiana Department of Social Services.

Child Day Care Center—is defined as any place or facility operated by any institution, society, agency, corporation, person or persons, or any other group for the

purpose of providing care, supervision, and guidance of seven or more children, not including those related to the caregiver, unaccompanied by parent or guardian, on a regular basis for at least twelve and one-half hours in a continuous 7-day week. Related or relative is defined as the natural or adopted child or grandchild of the caregiver or a child in the legal custody of the caregiver.

Child Care Staff—an individual directly involved in the care and supervision of the children in the center.

Committee on Private Child Care—Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2770 (December 2007), amended LR 36:

§7359. Procedures

A.– F.10. ...

G. Appeal Procedure

1. A provider may appeal the revocation or non-renewal of a license by submitting a written request to appeal the decision along with a copy of the notice within 15 days of receipt of the notice of revocation or non-renewal. A prospective provider may appeal the denial of an initial application by submitting a written request to appeal the decision within 30 days of receipt of the notice of denial of application. A request for appeal shall include the specific reasons the provider believes the decision to be erroneous and/or the specific reasons the decision is believed to be incorrect, and mailed to: Department of Social Services, Bureau of Appeals, P. O. Box 2944, Baton Rouge, LA 70821-9118.

G.2. – H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, LR 18:970 (September 1992), LR 26:1636 (August 2000), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2771 (December 2007), amended, LR 36:

§7361. General Requirements

A. – J. ...

K. Licensing Surveys; Notice Requirements. In accordance with Act 351 of the 2009 Regular Legislative Session, providers shall prominently post information advising parents or guardians that findings from licensing surveys are available online which includes the current web address and that findings from licensing surveys are also available upon written request to the Department of Social Services.

L. Influenza Notice to Parents. In accordance with Act 343 of the 2009 Regular Legislative Session, providers shall make available to each child's parent or legal guardian information relative to the risks associated with influenza and the availability, effectiveness, known contraindications and possible side effects of the influenza immunization. This information shall include the causes and symptoms of

influenza, the means by which influenza is spread, the places a parent or legal guardian may obtain additional information and where a child may be immunized against influenza. The information shall be updated annually if new information on the disease is available. The information shall be provided annually to each licensed facility by the Department of Social Services and shall be made available to parents or legal guardians prior to November 1 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 20:450 (April 1994), LR 24:2345 (December 1998), LR 29:1112 (July 2003), repromulgated by the Department of Social Services, Office of Family Support, LR 33:2760 (December 2007), amended, LR 36:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will improve the stability of the family by providing additional enforcement measures that increase the safety and welfare of children who are in out-of-home care on a regular or consistent basis.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? There will be 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? There will be no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? There will be no effect on family earnings and family budget.

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, this program is strictly an agency function.

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

All interested persons may submit written comments through, December 29, 2010, to Deidria W. Bolden, Assistant Secretary, Office of Family Support, 627 N. Fourth Street, Baton Rouge, LA., 70804-9065.

Public Hearing

A public hearing on the proposed rule will be held on December 29, 2010, at the Department of Social Services, Iberville Building, 627 N. Fourth Street, Seminar Room 1-127, Baton Rouge, LA., beginning at 11:30 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).

Kristy H. Nichols
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Child Daycare Services Child Care Quality Rating System**

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

This rule proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 21, Child Care Licensing; Title 67, Part III, and Subpart 12, Child Care Quality Rating System. These amendments pertaining to child day care facilities are required to implement provisions of Acts 194, 343, and 351 of the 2009 Regular Legislative Session.

Act 194 abolishes the Louisiana Advisory Committee on Licensing of Child Care Facilities and Child Placing Agencies and the Louisiana Committee on Private Child care and creates the Advisory Council on Child Care and Early Education to provide input and guidance to the Department of Social Services (DSS) on matters pertaining to rules, regulations, and licensing standards for Class A and Class B day care centers; changes the time period allowed for a provider to repeal the revocation or non-renewal of a license from 30 days to 15 days; and requires the licensing of tax-exempt religious organizations operating a child day care center 12.5 hours or more in a continuous seven day week. There is no cost to state or local government as a result of these changes. Members of the Advisory Council will serve voluntarily without compensation or reimbursement and will receive meeting materials via email.

Act 343 requires the Department of Health and Hospitals (DHH) to develop and provide information on influenza to the Department of Social Services (DSS) and requires DSS to provide this information to licensed child day care facilities. DHH provided one copy of a five-page document to DSS on influenza at some negligible cost. DSS contracted with the Office of State Printing to print and mail this document along with other influenza materials to 1,906 day care centers at an estimated cost of \$2,478 (1,906 X 1.30). This one-time cost was paid for with H1N1 federal grant funds received as Interagency Transfers from the Department of Health and Hospitals, Office of Public Health.

Act 351 requires child day care facilities to make available to parents information on how to view or obtain copies of child care licensing surveys from the department and requires DSS to develop this information on a form suitable for display. DSS developed and distributed a three-page document to 1,906 day care centers at an estimated cost of \$1,485 (\$742 SGF; \$743 FED), which includes printing (\$515), supplies (\$131), and postage (\$839). This one-time cost was absorbed within the Office of Family Support (OFS) FY 2009-10 budget appropriation.

The only additional cost associated with this rule is the cost for publishing rulemaking and printing policy, which is estimated to be approximately \$1,260 (\$630 State; \$630 Federal). This is a one-time cost that is routinely included in the agency's budget.

The total cost to implement these rule changes for FY 10 is \$5,223 (\$1,372 SGF; \$2,478 IAT; \$1,373 Federal). The only potential cost in subsequent fiscal years is the cost for DSS to

provide updated information on influenza to providers. To alleviate this cost, the information will be provided on the department's website and DSS will notify providers via email when this information is available.

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

There is no estimated effect on revenue collections of state or local governments as a result of this rule change

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

Act 194 requires tax-exempt religious organizations operating 12.5 hours or more to become licensed by DSS. At this time DSS cannot determine the number of these facilities in operation. If the organization chooses to become licensed as a Class A facility an annual licensure fee of \$25 to \$250 based on the licensed capacity of the facility is required by law. Religious organizations choosing to be licensed as a Class B facility are required by law to pay a one-time \$25 licensure fee at initial application. Act 343 may result in some negligible cost to child care providers to print updated information on influenza from DSS website. Both Acts 343 and 351 only require providers to post the information in a common and conspicuous location within the day care facility; therefore, no other costs are anticipated.

Parents or guardians of children attending these day care centers may benefit economically from this rule change because the information provided on influenza could help to alleviate doctor or emergency room visits if they follow the precautions that were outlined in the information.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule change will have no impact on competition and employment.

Deidria Bolden
Assistant Secretary
0911#102

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Elmer's Island Wildlife Refuge
(LAC 67:III.337)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules and regulations governing visitor regulations on Elmer's Island Wildlife Refuge.

Title 76

WILDLIFE AND FISHERIES

Part III. State Game and Fish Preserves and Sanctuaries

**Chapter 3. Particular Game and Fish Preserves,
Wildlife Management Areas, Refuges and
Conservation Areas**

§337. Elmer's Island Wildlife Refuge

A. Visitor Regulations for Elmer's Island Wildlife Refuge

1. Use of the refuge will be permitted from thirty minutes before official sunrise to thirty minutes after official sunset. This includes any land access routes to the refuge. No person or vehicle shall remain on the Elmer's Island Wildlife Refuge or any land access routes during the period

from 30 minutes after official sunset to 30 minutes before sunrise.

2. No person shall possess any glass bottles, glass drink containers or other glass products on Elmer's Island Wildlife Refuge.

3. The secretary of the department may restrict access to the refuge whenever circumstances exist such that restrictions are necessary to protect the refuge or the public from harm. No person shall enter onto or be on the grounds of Elmer's Island Wildlife Refuge during a restricted access period; or alternatively shall do so only in accordance with restrictions set forth by the secretary.

4. No person shall discharge or fire any firearms including muzzleloaders, or bows and arrows or crossbows on Elmer's Island.

5. No person shall commercially fish, conduct any guiding service, hunt, pursue, kill, molest or intentionally disturb any type of wildlife on the refuge, except for the legal recreational harvest of living aquatic resources.

6. No person shall be in areas marked as restricted by signs posted by the department.

7. No person shall operate any vehicles in a restricted area. No person shall operate a vehicle in an unsafe or careless manner as to endanger life or property or at any speed in excess of 5 miles per hour.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6, R.S. 56:109, R.S. 56:109.2, R.S. 56:763 and R.S. 56:781 et seq.

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

The Secretary of the Department of Wildlife is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Interested persons may submit comments relative to the proposed Rule to Mr. Joey Shepard, Research and Assessment Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, January 7, 2010.

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Robert J. Samanie, III
Chairman

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

RULE TITLE: Elmer's Island Wildlife Refuge

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

The proposed rule is anticipated to have no effect on costs or savings to state or local governmental units. Implementation and enforcement of the proposed rule will be carried out using the existing staff and funding level.

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

The proposed rule is anticipated to have no effect on revenue collections of state or local governmental units.

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

The establishment of visitor regulations for Elmer's Island Wildlife Refuge will directly benefit the people who visit the refuge by protecting them from harm. It will also protect and preserve the resources of the refuge for future generations to enjoy.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have no effect on competition and employment.

Wynette Kees
Deputy Undersecretary
0911#056

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Wildlife Rehabilitation Program (LAC 76:V.131)

The Wildlife and Fisheries Commission does hereby give notice of its intent to establish rules for the permitting and operation of wildlife rehabilitators.

The Secretary of the Department of Wildlife is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

PART V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§131. Wildlife Rehabilitation Program

A. Purpose

1. The purpose of this Section is to establish rules for the permitting and operation of wildlife rehabilitators.

B. Definitions

Rabies Vector Species (RVS)—mammalian species defined by the Louisiana Department of Wildlife and Fisheries (LDWF) as potential carriers of the rabies virus including, but not limited to the following:

- a. raccoons;
- b. foxes;
- c. coyotes;
- d. skunks; and
- e. bats.

Subpermittee—person authorized to conduct rehabilitation activities under the supervisory responsibility of a wildlife rehabilitator.

Supervisory Responsibility—to direct actions and accept responsibility for the actions of a named individual engaged in wildlife rehabilitation activities.

Wildlife Rehabilitation—activity that provides housing, treatment and temporary care of injured and/or orphaned indigenous animals with the goal of subsequent release of those healthy animals to appropriate habitats in the wild.

Wildlife Rehabilitator—a person who is permitted by the LDWF to engage in the practice of wildlife rehabilitation.

C. Permits

1. It shall be unlawful for any person to keep, hold or possess in captivity any sick, injured or orphaned wildlife (except fish) or otherwise engage in wildlife rehabilitation without first obtaining, at no charge, a LDWF Wildlife Rehabilitation Permit (WRP). In addition to the WRP, a United States Fish and Wildlife Service (USFWS) rehabilitation permit must be in possession to rehabilitate species covered by the Migratory Bird Treaty Act or Endangered Species Act.

2. A WRP authorizes the permittee to transport; temporarily possess; rehabilitate; transfer to a practicing veterinarian or another wildlife rehabilitator for treatment or euthanasia; release; or euthanize an injured, diseased, disabled, orphaned or otherwise debilitated live wildlife specified on their permit. Animals held under a WRP shall not be displayed for educational purposes or otherwise displayed or exposed to the public unless that individual animal has been permitted by LDWF or USFWS for that purpose.

D. Exemptions

1. Employees of the LDWF are exempt from all state wildlife rehabilitation permit requirements while they are on duty.

2. Licensed veterinarians are exempt, provided they are treating an animal under the authorization of a wildlife rehabilitator or LDWF employee, or are treating an animal taken in from the public, provided the animal is released into an appropriate habitat or accepted by a wildlife rehabilitator within 72 hours after receiving.

E. Permit Requirements

1. All applicants must be 18 years of age or older.

2. Anyone who has been convicted of a Class II or greater wildlife violation in Louisiana, or the equivalent in another state within the past three years, or has been convicted of a felony in Louisiana or another state, shall not be eligible for a WRP.

3. All applicants must complete a WRP application, liability release, and financial responsibility statement.

4. The applicant must achieve a minimum score of 80 percent on either the LDWF general wildlife rehabilitation or Rabies Vector Species examination. A passing score on the general wildlife rehabilitation exam is required before an individual and named subpermittees will be issued a WRP excluding RVS. A passing score on the Rabies Vector Species examination is required for a WRP that authorizes rehabilitation of RVS.

5. All applicants must attend and successfully complete a LDWF approved wildlife rehabilitation class prior to or within six months of receiving their WRP. Failure to attend and successfully complete the class will result in the revocation of the WRP.

6. All applicants must provide verification of having access to veterinary services by submitting a Statement of Veterinary Support Form provided by LDWF.

7. All facilities where animals will be housed or maintained will be inspected by LDWF prior to receiving a WRP.

F. General Rules

1. The WRP will not exempt the holder from regulations of other state, federal, parish or municipal governments or agencies.

2. Sale of any animal held under a WRP is prohibited.

3. No animal held under a WRP may be used for human consumption, unless specifically approved.

4. No Louisiana S1-ranked species may be held under a WRP, without written authorization from the LDWF Wildlife Division.

5. No animal intended for wildlife rehabilitation may be imported into or exported out of the state of Louisiana without written authorization by the LDWF Wildlife Division.

6. The WRP does not authorize the possession of white-tail deer, bears, wild turkeys, alligators, or rabies vector species (RVS) unless specifically stated on the permit.

7. Request for an Extension

a. WRP holders shall not possess a non-migratory bird for more than 90 days, other injured wildlife longer than 45 days, or other orphaned wildlife no longer than required to prepare the animal for release, but not to exceed 120 days, except that a permit holder may submit a written request for an extension of possession if:

i. the specified animal will likely be releasable after the time frame listed above but is currently non-releasable because of biological reasons; or

ii. a licensed veterinarian determines, due to medical reasons, the animal requires additional rehabilitation time.

b. All extension requests shall include a proposed release date and be submitted in writing to the LDWF Wildlife Division. The permit holder may continue to house the specified animal while the LDWF is reviewing the request. The LDWF will provide a written response and include specific dates and instructions regarding disposition of the animal.

8. WRP holders must ensure that animals are exposed to minimal handling and other human contact, except as necessary to maintain sanitary conditions, provide food and water, provide medical care, and prepare the animal for release.

9. Animals that are determined medically non-releasable, exhibit signs of adjusted life in captivity and pose minimum zoonotic disease potential may be considered for educational animal designation. A LDWF Special Purpose and Possession permit application must be submitted to the LDWF Wildlife Division by the end of the 90 day rehabilitation period to be considered for educational animal status.

10. All WRPs shall expire on December 31 of the year of issue unless otherwise noted.

11. Permits are non-transferable but may include up to five listed subpermittees. Subpermittees are authorized to transport, house, and provide care for animals away from the wildlife rehabilitation facility. A person caring for animals at the wildlife rehabilitation facility is not required to be a subpermittee. WRP holders desiring to add subpermittees, must submit a subpermittee application form. Subpermittee

forms will only be accepted by the LDWF at the original time of permitting, renewal and during June 1-30 of each year. Individuals may be removed as subpermittees at any time of the year. A subpermittee removal form must be submitted. All subpermittees:

a. must be 18 years of age or older;

b. are exempt from the testing requirement but are subject to all other rules governing WRP holders including animal housing and care requirements;

c. must work under the direction and supervision of the WRP holder;

d. may be removed at any time by the supervising WRP holder or the LDWF and in such cases, must surrender any animals to the WRP holder or the LDWF;

e. must have a valid subpermittee permit on the premises where animals are housed if animals are housed away from the supervising WRP holder's facility; and

f. must not transport or possess RVS species away from the supervising WRP holder's facility unless they successfully pass the RVS examination.

12. WRP holders are subject to non-renewal or revocation of their WRP if the LDWF determines that any of their listed subpermittees are not properly supervised or fail to abide by applicable WRP rules.

13. The LDWF provides no financial or material assistance to wildlife rehabilitators.

14. Euthanasia of any animal held under a WRP is to be performed under the guidelines adopted by the American Veterinary Medical Association (AVMA).

15. Animals held under a WRP shall not be released on private land without written permission of the landowner or landowner designee.

16. Animals held under a WRP shall not be released on public land without first obtaining written permission from the governmental entity owning or administering the property.

17. All permitted animals and facilities in which they are housed shall be maintained within the minimum standards as provided by the National Wildlife Rehabilitators Association (NWRA) and International Wildlife Rehabilitation Council (IWRC) publication of Minimum Standards for Wildlife Rehabilitation.

18. It is strongly recommended that any wildlife rehabilitator working with rabies vector species receive pre-exposure rabies immunization.

G. Reporting and Renewal Requirements

1. All animals held under a WRP must be fully documented on the Wildlife Rehabilitation Report Form provided by the LDWF.

2. Wildlife Rehabilitation Report Forms for the permit period must be submitted to the LDWF no later than 30 days following the expiration of the permit and the WRP will not be renewed until these forms are received. Reports will cover the period from December 1 of the prior license year to November 30 of the current license year. Any wildlife rehabilitator who does not submit his/her report by the thirtieth day after the expiration date of the WRP, or who submits a false or materially incomplete report intentionally may be issued a citation for violation of Louisiana Wildlife and Fisheries Commission rules and regulations. If the citation does not result in a conviction, plea of guilty, or plea of no contest, the wildlife rehabilitator may be considered

for reapplication upon receipt of the late wildlife rehabilitation form(s).

3. Report forms must be current and shall be available for inspection at all times by wildlife enforcement agents or any other authorized representatives of the department.

4. Upon expiration of a WRP and if the WRP has not been renewed, all animals held under the permit must be disposed of by transferring to a currently licensed WRP, released into the wild, or euthanized.

H. Penalties

1. Violation of these rules and regulations constitutes a Class 2 offense.

2. Violation of these rules and regulations may result in citation and/or revocation of the WRP.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:1, R.S. 56:5, R.S.56:6 (10), and (15), and R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 36:

Family Impact Statement

In accordance with Act #1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Public Comments

Interested persons may submit comments relative to the proposed Rule to Mrs. Carrie Salyers, Wildlife and Fisheries, Wildlife Division, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, January 7, 2010.

Robert J. Samanie, III
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Wildlife Rehabilitation Program

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

No increase or decrease in costs associated with implementing the proposed rule is anticipated. Implementation of the rule will be carried out by existing staff and funding level.

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

No effect on revenue collections of state and local governmental units is anticipated from the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS (Summary)

The proposed rule establishes requirements for the permitting and operation of wildlife rehabilitators. Current wildlife rehabilitators and those who wish to obtain a permit in the future will be minimally affected. They will have to comply with the new regulation changes and education requirements, which may require a small class registration charge. The reporting forms provided by the Department of Wildlife and Fisheries will help to provide consistent data regarding wildlife rehabilitation activities and their potential impacts on species populations.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment in the public and private sectors.

Wynnette Kees
Deputy Undersecretary
0911#057

Robert E. Hosse
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given January 25-29, 2010, at 9:30 a.m. in the Nelson Memorial Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is December 11, 2009. No applications will be accepted after December 11, 2009.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to December 11, 2009. Questions may be directed to (225) 952-8100.

Mike Strain, DVM
Commissioner

0911#053

POTPOURRI

Department of Insurance Office of the Commissioner

Bulletin 09-08—Homeowners and Fire/Commercial Insurance—Policy Disclosure Forms

In accordance with R.S. 22:1319 and 22:1332, the Louisiana Department of Insurance hereby amends and re-promulgates the attached disclosure forms to be used by all property and casualty insurance companies issuing, delivering or renewing homeowners or fire/commercial insurance policies that provide coverage for damage to property in Louisiana.

These disclosure forms shall supersede the disclosure forms issued in Bulletin 06-06 and published in the Potpourri section of the *Louisiana Register* on December 20, 2006. The appropriate disclosure form shall be presented to the insured as an insert in the front of the policy upon issuance, delivery or renewal. Compliance with R.S. 22:1319 and 22:1332 shall begin January 1, 2010

IMPORTANT INFORMATION REQUIRED BY
THE LOUISIANA DEPARTMENT OF INSURANCE

Homeowners Insurance Policy Coverage Disclosure Summary
This form is promulgated pursuant to LSA-R.S. 22:1332

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

****READ YOUR INSURANCE POLICY
FOR COMPLETE POLICY TERMS AND CONDITIONS****

COVERAGE(S) FOR WHICH PREMIUM WAS PAID

[INSERT PERSONAL PROPERTY COVERAGES]

Example:

<i>Coverage A</i>	-	<i>Dwelling</i>
<i>Coverage B</i>	-	<i>Other Structures</i>
<i>Coverage C</i>	-	<i>Personal Property</i>
<i>Coverage D</i>	-	<i>Loss of Use</i>
<i>Coverage E</i>	-	<i>Personal Liability</i>
<i>Coverage F</i>	-	<i>Medical Payments</i>

Deductibles

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

- You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Example—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

[The insurer shall comply with LSA-R.S. 22:1332.B(6) by selecting and inserting either option A or B below:

- A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss under each of Coverage A, B, C and D and the total of all losses combined shall exceed by at least ten percent (10%) the applicable deductible so that there shall be a net payment to the insured.
- B. Utilizing the standardized example prepared by the LDOI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

If the total insured value of the dwelling or Coverage A is \$200,000.00 and you have a 2% hurricane, wind, or named storm deductible, then your hurricane, wind or named storm deductible would be $\$200,000.00 \times .02\% = \$4,000.00$.

Losses:

Coverage A – Dwelling	\$15,000.00
Coverage B – Other Structures	\$ 2,500.00
Coverage C – Personal Property	\$ 3,000.00
Coverage D – Loss of Use	\$ 2,000.00
Total amount of all losses	\$22,500.00
Less 2% hurricane, wind or named storm deductible	\$ 4,000.00
Net payment to insured	\$18,500.00]

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

LIMITATIONS OR EXCLUSIONS UNDER THIS POLICY

FLOOD — Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes but is not limited to storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy from this or another insurer if the amount of the primary flood insurance is not enough to cover the value of your property.

- You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

MOLD — Damage caused solely by mold [is/is not] covered under this policy.

****FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS****

CLAIM FILING PROCESS There may be time limitations for filing a claim and filing of a satisfactory proof of loss. There may also be time limitations for repairing and replacing damaged property that could cause you to not recover the replacement cost for the insured loss of your property, if applicable.

PAYMENT OF CLAIMS Depending on the terms of the insurance policy, some losses may be based on actual cash value (ACV) and other losses based on replacement cost (RC).

- ACV is the amount needed to repair or replace the damaged or destroyed property, minus the depreciation.
- RC involves the initial payment of actual cash value (ACV) of a loss, and the subsequent payment of the additional amount that is actually and necessarily expended to repair or replace the damaged or destroyed property.

****** Refer to your policy for the terms and conditions describing how a particular loss is to be paid.

PAYMENT AND ADJUSTMENT OF CLAIMS Pursuant to LSA-R.S. 22:1892 and 22:1973, except in the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim and/or a claim for reasonable medical expenses within fourteen (14) days after notification of loss by the claimant.

In the case of catastrophic loss, the insurer shall initiate loss adjustment of a property damage claim within thirty (30) days after notification of loss by the claimant unless the Commissioner of Insurance promulgates a rule to extend the time period for initiating a loss adjustment for damages arising from a presidentially declared emergency or disaster or a gubernatorially declared emergency or disaster for up to an additional thirty (30) days. Thereafter, one additional extension of the period of time for initiating a loss adjustment may be allowed by the Commissioner of Insurance if approved by the Senate Committee on Insurance and the House Committee on Insurance.

All insurers shall make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after the receipt of satisfactory proof of loss of that claim.

Failure to make such payment within thirty (30) days after receipt of such satisfactory written proofs and demand thereof or failure to make a written offer to settle any property damage claim, including a third-party claim, within thirty (30) days after receipt of a satisfactory proof of loss of that claim may result in a late penalty against the insurer in addition to the payment of the claim.

If the insurer is found to be arbitrary, capricious, or without probable cause in settling any property damage claim, the insurer must pay the insured, in addition to the amount of the loss, fifty percent (50%) damages on the amount found to be due from the insurer to the insured, or one thousand dollars (\$1,000.00), whichever is greater, as well as attorney fees and costs, if applicable.

EFFECTIVE JANUARY 1, 2010

IMPORTANT INFORMATION REQUIRED BY
THE LOUISIANA DEPARTMENT OF INSURANCE

Fire Insurance Policy Coverage Disclosure Summary
(other than Homeowners)

Or

Commercial Insurance Policy Coverage Disclosure Summary

This form is promulgated pursuant to LSA-R.S. 22:1319

THIS IS ONLY A SUMMARY OF YOUR COVERAGE AND DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGES OR ANY OTHER PROVISIONS CONTAINED IN YOUR POLICY. INSURANCE IS A CONTRACT. THE LANGUAGE IN YOUR POLICY CONTROLS YOUR LEGAL RIGHTS AND OBLIGATIONS.

****READ YOUR INSURANCE POLICY
FOR COMPLETE POLICY TERMS AND CONDITIONS****

COVERAGE(S) FOR WHICH PREMIUM WAS PAID

[INSERT PROPERTY COVERAGES]

Deductibles

This policy sets forth certain deductibles that will be applied to claims for damages. When applicable, a deductible will be subtracted from your total claim and you will be paid the balance subject to applicable coverage limits.

- You may be able to reduce your premium by increasing your deductible. Contact your producer (agent) or insurer for details.

NOTICE: This policy [does/does not] set forth a separate deductible for covered losses caused by [hurricane; wind; named storm] as defined in the policy.

Separate Deductible Examples—Hurricane, Wind or Named Storm Damage.

If applicable, the following illustrates how a separate deductible applying to hurricane, wind or named storm damage is applied under your policy:

[The insurer shall comply with LSA-R.S. 22:1319.B(3) by selecting either option A or B below:

- A. Developing its own standardized example to reflect how a hurricane, wind, or named storm damage loss will be adjusted under the policy. The standardized example shall set forth a separate loss for each coverage included in the policy for which a premium has been paid. The total of all losses combined shall exceed by a least ten percent (10%) the applicable deductible(s) so that the example demonstrates a net payment to the insured.

- B. Utilizing the standardized example prepared by the LDOI if this standardized example properly reflects how a separate deductible is applied to a hurricane, wind, or named storm damage loss under the policy:

The following assumes no co-insurance penalty and a 2% hurricane, wind, or named storm deductible. The amounts of loss to the damaged property are \$50,000 (building) and \$20,000 (business personal property).

Limits of insurance on building	\$100,000.00
Total amount of building loss	\$ 50,000.00
Less 2% deductible (\$100,000 X .02)	- \$ 2,000.00
Net payment to insured for building loss	\$ 48,000.00
Limits of insurance on the business personal property	\$ 50,000.00
Total amount of business personal property loss	\$ 20,000.00
Less 2% deductible (\$50,000 X .02)	- \$ 1,000.00
Net payment to insured for business personal property loss	\$ 19,000.00
Total net payment to insured for building and business personal property loss (\$48,000 + \$19,000)	\$ 67,000.00]

TO SEE EXACTLY HOW YOUR SEPARATE HURRICANE, WIND OR NAMED STORM DEDUCTIBLE WILL APPLY, PLEASE REFER TO YOUR POLICY.

LIMITATIONS OR EXCLUSIONS UNDER THIS POLICY

FLOOD — Flood damage [is/is not] covered, regardless of how caused, when flood is the peril that causes the loss. Flood water includes, but is not limited to, storm surge, waves, tidal water, overflow of a body of water, whether driven by wind or not.

Flood Insurance may be available through the National Flood Insurance Program (NFIP). NFIP flood insurance may provide coverage for damage to your dwelling or building and/or contents subject to the coverage limits and terms of the policy.

Excess Flood Insurance may be available under a separate policy, from this or another insurer, if the amount of the primary flood insurance is not enough to cover the value of your property.

- You may contact your producer (agent) or insurer for more information on the NFIP and excess flood insurance.

MOLD — Damage caused solely by mold [is/is not] covered under this policy.

****FOR ALL OTHER LIMITATIONS OR EXCLUSIONS REFER TO YOUR POLICY FOR COMPLETE DETAILS ON TERMS AND PROVISIONS****

EFFECTIVE JANUARY 1, 2010

James J. Donelon
Commissioner

0911#074

POTPOURRI
Department of Natural Resources
Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
CRC Western Wireline Serv. Inc.	Cade	L	CRC Western Wireline Serv. Inc.	001	990457
Goldking Production Co.	Wildcat — So. La. Houma Dist.	L	Nettie M. Jones Et Al	001	150077 (29)
Gulf Coast Drill. & Expl. Inc.	Neale	L	Cooper Hennigan	001	66222
L.A. West	Truxno	M	Nale	005	36406
Cajun Minerals, Inc.	Maxie	L	E. C. Daigle	001	217814

James H. Welsh
 Commissioner

0911#050

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 22 claims in the amount of \$86,120.67 were received for payment during the period September 1, 2009-October 31, 2009.

There were 22 claims paid and 0 claims denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2905.370	9054.330	Terrebonne
2905.952	8926.952	Plaquemines
2906.645	9015.341	Lafourche
2909.451	9013.888	Lafourche
2910.388	9023.993	Lafourche
2911.960	8959.942	Jefferson
2918.159	8957.205	Jefferson

2918.366	8945.552	Plaquemines
2918.682	8950.152	Jefferson
2921.440	9032.160	Terrebonne
2923.908	9001.437	Jefferson
2924.353	9003.215	Lafourche
2927.945	9006.036	Jefferson
2940.910	8943.857	Plaquemines
2944.694	8937.242	St. Bernard
2947.419	8920.075	St. Bernard
2949.594	8943.373	St. Bernard
2949.674	8940.422	St. Bernard
2950.228	8937.187	St. Bernard
2951.111	8940.100	St. Bernard
3001.219	8932.504	St. Bernard
3009.789	8945.516	Orleans

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)342-0122.

Scott A. Angelle
 Secretary

0911#071

POTPOURRI
Department of Revenue
Office of the Secretary

Meeting of Act 442 Collaborative Working Group

The next meeting for the Collaborative Working Group will be held on Wednesday, November 18, 2009, at 9 a.m. in the Calcasieu Room on the second floor of the LaSalle Building, 617 N. Third Street, Baton Rouge, Louisiana.

Section 4 of Act 442 of the 2009 Regular Session of the Louisiana Legislature established a collaborative working group of state and local tax administrators and industry representatives for the purpose of assisting in developing policy regarding the determination of which items should be considered as moveable or immovable property for the purposes of state and local sales and use tax.

The group's mission is to study and develop specific proposals on the definition of tangible personal property under Chapters 2, 2-A, 2-B and 2-D of Title 47 of the Louisiana Revised Statutes of 1950. The group shall report its policy recommendations to the chairmen of the House Committee on Ways and Means and Senate Committee on Revenue and Fiscal Affairs no later than January 31, 2011.

The group shall cease to exist on June 30, 2011.

Further information concerning this meeting may be obtained from Ted James, Office of the Secretary, P.O. Box 66258, Baton Rouge, LA 70896, phone (225) 219-2707.

Cynthia Bridges
 Secretary

0911#065

POTPOURRI

Department of Social Services Office of Community Services

Public Hearing—Substantive Changes to Proposed Rule; Guardianship Subsidy Program (LAC 67:V.Chapter 41)

The Department of Social Services, Office of Community Services published a Notice of Intent to promulgate §4101 and §4103, Subsidizing Guardianship Arrangements for Children in Foster Care and Nonrecurring Expenses in Guardianship Arrangements, respectively, and the Family Impact Statement in the August 20, 2009 edition of the *Louisiana Register* (LR 35:1806-1809). The notice solicited comments and testimony. As a result of its analysis of the comments and testimony received, the agency proposes to amend certain portions of the proposed Rule. The agency proposes to change the title of the rule from Kinship Guardianship Subsidy Program to Guardianship Subsidy Program to differentiate between this program and the Kinship Subsidy Program provided through the Office of Family Support, also within the Department of Social Services. Within all sections of the rule the term “Kinship Guardianship Subsidy Program” has been changed to “Guardianship Subsidy Program”.

The changes to §4101 follow. Within Subsection A, Part 1, clarification was provided to show this program will be applicable only to those individuals with an established familial or emotional relationship to the child prior to the child’s entry into state custody. Within Subsection B, Part 1, clarification was provided to define the subsidy as ongoing only until the child reaches age 18 dependent upon the child remaining in the care of the guardian with whom the subsidy agreement is established. Within Subsection B, Part 2, clarification was provided regarding the determination of the special board amount and the extent of the annual review in determining the level of care required from the caregiver to meet the child’s needs, including reduction of the special board rate based on a reduction in the level of care provided. Within Subsection B, Part 3, subpart a, section ii, clarification was provided that special services do not include therapeutic intervention for the sole purpose of providing behavior management assistance to the guardian. Within Subsection B, Part 2, subpart c, the term “Chaffee Foster Care Independence Program” was clarified to read “Chaffee Foster Care Independent Living Skills Training”. Within Subsection C, Part 1, the reference to “stranger adoption for long term permanency” was expanded to be more fully descriptive as “adoption or any other long term permanency arrangement”. Within Subsection C, Part 2 the language was clarified to reference children in the custody of Louisiana placed in accordance with the Interstate Compact on the Placement of Children rather than just children placed with a caregiver in another state. Within Subsection E, the language was clarified to outline the procedure for a duly designated tutor/guardian after the death of the legal guardian receiving a guardianship subsidy to be able to obtain financial support for the ongoing care of the child.

The changes to §4103 follow. Within Subsection A, Part 6 was added, shifting the number of parts within this section from 8 to 9, with the previous Part 6 becoming Part 7, the

previous Part 7 becoming Part 8, and the previous Part 8 becoming Part 9. The information added at Subsection A, Part 6 clarifies that when a child is returned to the custody of the state and a guardianship arrangement dissolved, a separate and complete subsidy agreement may be entered with another eligible guardian under the same terms as any other guardianship arrangement. Information in the previous Subsection A, Part 7, which changed to Subsection A, Part 8 clarified that Louisiana will only be responsible for paying non-recurring expenses for guardianship arrangements for children in the custody of the state of Louisiana when the state of Louisiana is a partner to the agreement with the guardian.

The Family Impact Statement clarifications follow. Section 2, The effect on the authority and rights of parents regarding education and supervision of their children, was revised to clarify biological parents may petition the juvenile court which exercised authority over the custody of the children and grated the Guardianship arrangement to return the children to their care and supervision at any point they wish, and the requirement that the court engage DSS in assessing any risk factors for the child within the home and family environments as well as the trauma of disrupting the child’s current life circumstances. Section 3, The effect on the functioning of the family was also revised to clarify the Guardian has the same parental controls as they have for their own children in accordance with all state and federal guidelines and with the exception of the fact that these rights are subject to the residual rights of the biological parent. Section 5, The effect on the behavior and personal responsibility of children, was clarified by removing the term “permanent” in reference to Guardianship, as the biological parents do retain some residual rights and could potentially petition the court to resume custody of their children. No fiscal or economic impact will result from the amendments proposed in this notice.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 5. Foster Care

Chapter 41. Guardianship Subsidy Program

§4101. Subsidizing Guardianship Arrangements for Children in Foster Care

A. Overview of Program Purpose

1. The Subsidized Guardianship Program enables the Department of Social Services (DSS) to make payments to certified relative and fictive kin caregivers on behalf of a child who otherwise might not be able to achieve permanency outside of agency custody because of special needs or other circumstances. Subsidy payments shall be limited to a child(ren) for whom guardianship is indicated due to other more permanent options such as reunification with the parents, immediate unsubsidized custody to a relative or other caregiver, or adoption being determined unfeasible for the child. The guardianship subsidy applies only to a child(ren) for whom the DSS holds legal custody, only to potential caregivers with whom the child had an established familial or emotional relationship prior to entering DSS custody, and when the kinship placement provider becomes a certified foster caregiver according to the certification standards of the State, and, the child(ren) remains in the certified kinship placement for at least 6

consecutive months. The granting of a subsidy shall not affect the legal status of the child nor the rights and responsibilities of the guardianship caregivers.

2. The prospective guardianship family must meet basic foster care certification eligibility requirements in all respects except for the ability to assume complete financial responsibility for the child's care.

B. Types of Subsidy Payments. The child may be subsidized for the following services up to age 18.

1. Maintenance. The maintenance subsidy includes basic living expenses such as board, room, clothing, spending money, and ordinary medical costs. The maintenance subsidy may be ongoing until the child reaches age 18, but must be renewed on a yearly basis. This renewal will be dependent upon the child remaining in the care of the guardian with whom the subsidy agreement was established. The amount of payment shall not exceed 80 percent of the state's regular foster care board rate based on the monthly flat rate payments of the regular foster care board rate for the corresponding age group. Monthly maintenance payments shall not be based on subsidized foster care arrangements such as specialized foster care, alternate family care, or therapeutic foster care. Changes in the maintenance subsidy rate may only occur once a year and the adjustment is made at the time of the subsidy renewal. Any such adjustments to the maintenance subsidy rate may occur due to availability of funds, legislative changes or adjustments to the regular foster care board rate.

2. Special Board Rate. Foster parents entering into a guardianship agreement for a foster child for whom a special board rate was received during the foster care episode may request up to a maximum of \$240 which is 80 percent of the special board rate amount of \$300. This is only provided if the care and needs of the child in the guardianship arrangement warrant this same special board rate. The continued need for the special board rate shall be reviewed at the time of the annual review. This review shall consist of a determination of whether the same level of specialized care by the guardian, for which the special board rate was being provided at the time of the subsidy agreement, continues to be necessary to meet the child's needs. Any reduction in the level of care required by the guardian should result in a decrease in the amount of special board rate compensation to the guardian.

3. Special Services.

a. The special services subsidy is time limited and in some cases may be a one time payment. It is the special assistance given to handle an anticipated expense when no other family or community resource is available. If needed, it can be offered in addition to the maintenance and special board rate subsidy. The special services subsidy must be established as a part of the initial guardianship subsidy agreement, and may not be provided or renegotiated based on any circumstances which develop or issues identified after that point. Special services subsidies include the following types of needs:

i. Special medical costs deemed medically necessary for the daily functioning of the child for any condition existing prior to the date of the initial judgment establishing guardianship with the kinship caregiver and not covered by Medicaid or other insurance.

ii. Ongoing therapeutic treatment costs to complete current therapy and future treatment costs on a time limited basis up to 18 years of age, as agency resources allow, related to the abuse/neglect received by the child and impacting the child's capacity to function effectively as part of the child's educational, family or social environment. This does not include the cost of residential care or psychiatric hospitalization, nor does it include therapeutic intervention for the sole purpose of providing behavior management assistance to the guardian.

iii. Legal and court costs to the family up to \$2000 for establishing the guardianship arrangement.

b. Medicaid Eligibility: The child remains eligible for Medicaid coverage up to 18 years of age when entering a Guardianship arrangement from foster care. This coverage will be eligible utilizing Title IV-E federal benefits if the child was Title IV-E eligible at the time of the subsidy arrangement.

c. Chaffee Foster Care Independent Living Skills Training and Education Training Voucher Eligibility: The child is eligible for participation in the Chaffee Foster Care Independent Living Skills Training and for Education Training Vouchers if the child enters a Guardianship arrangement from Foster Care after reaching 16 years of age.

C. Exploration of Guardianship Resources

1. Before a child is determined by the Office of Community Services (OCS) as eligible for a guardianship subsidy, it must be determined the child can not be reunited with the parents, it must be determined there are no relative resources available to accept custody of the child without subsidy payment, and, resources for adoptive placement must be explored by the child's worker. If the kinship family with whom the child is placed refuses to adopt the child or is unable to be certified as an adoptive family, the agency has to demonstrate the benefits of maintaining the child in the placement in a guardianship arrangement as opposed to pursuing adoption or any other long term permanency arrangement. It is also necessary for the child's worker to discuss plans for a guardianship arrangement with the child and document the outcome of that discussion with the child, including agreement with that plan by any child 14 years of age up to 18 years of age. Lack of agreement by any child 14 years of age up to 18 years of age should be an ongoing topic of counseling regarding the benefits of the arrangement between the worker and the child, until a permanency option is achieved for the child or until the child attains 18 years of age.

2. Whenever an eligible child in the custody of Louisiana DSS is legally placed based on the Interstate Compact on the Placement of Children guidelines with a certified kinship caregiver in another state, the family shall be eligible for a guardianship subsidy under the same conditions as Louisiana residents.

D. Eligibility Criteria

1. The OCS, Guardianship Subsidy Program, will determine the appropriateness of subsidy benefits, the type of subsidy, and, the level of the subsidy. An agreement form between the OCS and the prospective guardianship parent(s), with clearly delineated terms, must be signed prior to the granting of the final decree for guardianship. This agreement will be reviewed on an annual basis thereafter by the OCS to insure ongoing eligibility.

2. A family is considered eligible for participation in the Guardianship Subsidy Program if they are related to the child or family of the child through blood or marriage or if there exists a fictive kin relationship, which is defined as a relationship with those individuals connected to an individual child or the family of that child through bonds of affection, concern, obligation, and/or responsibility prior to the child's entry into the custody of the state, and the individual(s) are considered by the child or family to hold the same level of relationship with the child or family as those individuals related by blood or marriage.

E. Effects of Deaths of Guardians on Guardianship Subsidy.

1. Where a guardianship subsidy agreement is in effect and the guardians both die prior to the child reaching the age of majority, the subsidy agreement will end. The child may remain in the care of a duly designated tutor/guardian as established by the family prior to their death, without further involvement of the agency.

2. If the duly designated tutor/guardian requires financial assistance to maintain the care of the child it will be necessary for those individuals to become certified as foster parents and retain care of the child six months after certification prior to entering into a Guardianship subsidy agreement with the agency. During the process of becoming certified as foster parents the family may retain care responsibility of the child without the child returning to the custody of the state. However, there can be no financial support of the child by the state until such family has been certified and the Guardianship subsidy agreement established. Also, the agency may support the establishment of the legal Guardianship arrangement between the designated tutor/guardian and the child up to any amount added to the amount utilized for the previously established Guardianship arrangement that does not exceed the \$2000 limit.

3. If the designated tutor/guardian is unable to satisfy criteria for certification, the tutor/guardian may retain care of the child based on the prior arrangements by the deceased guardians without further intervention or financial support of the agency or the child may be returned to the custody and care of the State by order of the court.

AUTHORITY NOTE: Promulgated in accordance with P.L. 110-351.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:

§4103. Nonrecurring Expenses in Guardianship Arrangements

A. The OCS sets forth criteria for reimbursement of nonrecurring expenses associated with establishing Guardianship arrangements for children in foster care.

1. The amount of the payment made for nonrecurring expenses associated with establishing Guardianship arrangements for children in foster care shall be determined through agreement between the guardian(s) and the OCS. The agreement must indicate the nature and amount of the nonrecurring expenses to be paid.

2. The agreement for nonrecurring expenses must be signed prior to the final decree granting guardianship.

3. There must be no income eligibility requirement for guardian(s) in determining whether payments for nonrecurring expenses associated with establishing Guardianship arrangements for children in foster care shall

be made. However, potential guardians cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

4. The maximum rate of reimbursement for nonrecurring expenses has been set at \$2,000 per Guardianship arrangement.

5. In cases where siblings are placed and Guardianship arrangements established, whether separately or as a unit, each child is treated as an individual with separate reimbursement for nonrecurring expenses up to the maximum amount allowable for each child.

6. In cases where a child has been returned to the custody of the State and a Guardianship arrangement dissolved, the child is allowed separate and complete reimbursement for nonrecurring expenses up to the maximum amount allowable for establishing another Guardianship arrangement.

7. Reimbursement is limited to costs incurred by or on behalf of guardian(s) not otherwise reimbursed from other sources. Payments for nonrecurring expenses shall be made directly by the OCS.

8. When the Guardianship arrangement for the child involves interstate placement, Louisiana will only be responsible for paying the nonrecurring expenses for the arrangement for the child when Louisiana is the child's legal custodian and enters into the Guardianship subsidy agreement with the caregiver.

9. The term *nonrecurring expenses in relation to Guardianship arrangements* means reasonable and necessary legal fees, court costs, attorney fees and other expenses which are directly related to the legal establishment of the Guardianship arrangement for a child in foster care, which are not incurred in violation of state or federal law, and which have not been reimbursed from other sources or other funds. Other expenses which are directly related to the legal establishment of the Guardianship arrangement for a child in foster care means the costs of the arrangement incurred by or on behalf of the guardians and for which guardians carry the ultimate liability for payment. Such costs may include but are not limited to travel costs for the child and/or guardians to be present for the legal proceedings to establish the Guardianship arrangement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 110-351.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 36:

Family Impact Statement

1. The Effect on the Stability of the Family. Establishing the Guardianship Subsidy program will provide necessary financial resources to relative or fictive kin caregivers to support and stabilize the placement of children to whom they are connected and willing to provide care and supervision. Many times families are unable to accept custody of a child to whom they are connected solely due to the additional financial burden on the family. This will also provide children greater permanency than remaining in foster care as the agency and court will no longer be involved in the custody and supervision of the child and family, relinquishing full parental control to the relative or fictive kin caregiver through adulthood.

2. The Effect on the Authority and Rights of Parents Regarding Education and Supervision of Their Children. The family providing care to the child will have an established

legal right to all educational and supervisory authority and rights to the child's care. The biological parents may petition the juvenile court which exercised authority over the custody of the child(ren) and granted the Guardianship arrangement to return the child(ren) to their care and supervision at any point they wish as they will retain parental rights to the child. Prior to granting such a petition by the parents, the court would need to engage the DSS in assessing any risk factors to the child within the family and home environments as well as the trauma of disrupting the child's current life circumstances.

3. The Effect on the Functioning of the Family. The family providing care to the child will have the same parental controls, responsibilities, and rights for the child as long as the Guardianship arrangement remains in effect as they would have for their own children subject to the residual rights of the parents, without interference from the agency or court in accordance with all state and federal legal guidelines.

4. The Effect on Family Earnings and Family Budget. The financial support provided through the Guardianship Subsidy will enable the family to provide necessary care and supervision to the child without undue financial burden on the family budget.

5. The Effect on the Behavior and Personal Responsibility of Children. Establishment of the Guardianship relationship will allow children to be members of the caregiver family, thus stabilizing the role and position

of the child in the family. This should support more positive behavioral interaction and personal responsibility by the child.

6. The Ability of the Family or a Local Government to Perform the Function as Contained in the Proposed Rule. The family will already have been the child's caregiver for at least 6 months prior to establishing the Guardianship arrangement. Thus establishing the legal arrangement will only serve to support an already existing relationship by removing the agency and the court from the family dynamic.

Public Comments

A public hearing will be held on Tuesday, December 29, 2009 at 1:00 p.m. at the Department of Social Services, Iberville Building 627 N. Fourth Street, Baton Rouge, in Room 1-127, to receive comments on the proposed Guardianship Subsidy Program. Written comments should be sent to Kaaren Hebert, Assistant Secretary, Office of Community Services, and P. O. Box 3318, Baton Rouge, LA 70821. She is responsible for responding to inquiries regarding these substantive amendments to the proposed Rule. The deadline for receipt of all written comments is 10 a.m. on Friday, January 8, 2010.

Kristy H. Nichols
Secretary

0911#104

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