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Executive Orders

EXECUTIVE ORDER MJF 99-9

Interstate 49 South Project Task Force

WHEREAS, Executive Order No. MJF 97-38, signed on September 18, 1997, established the Interstate 49 South Project Task Force (hereafter "Task Force");

WHEREAS, Executive Order No. MJF 98-10, signed on March 11, 1998, extended the time period for the Task Force to submit its report to the governor and Executive Order No. MJF 98-34,¹ signed on July 14, 1998, altered the composition of the membership of the Task Force; and

WHEREAS, it is necessary to amend Executive Order No. MJF 97-38, as amended by Executive Order Nos. MJF 98-10 and MJF 98-34,² in order to provide an additional secondary duty for the Task Force;

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

SECTION 1: Section 3 of Executive Order No. MJF 97-38, as amended by Executive Order Nos. MJF 98-10 and MJF 98-34,³ is amended to provide for an additional secondary duty in subsection 3(B) as follows:

A. The phase I secondary duty of the Task Force shall be to prepare documentation, suitable for submission to the members of the State of Louisiana's United States Congressional Delegation, which documents the reasons for the United States Congress to designate U.S. 90, between the Westbank Expressway in New Orleans and I-10 in Lafayette, as an interstate route through South Louisiana.

B. The phase II secondary duty of the Task Force shall be to meet quarterly to review and report to the governor on the progress of the I-49 South Project.

SECTION 2: All other sections and subsections of Executive Order No. MJF 97-38, as amended by Executive Order Nos. MJF 98-10 and MJF 98-34, shall remain in full force and effect.

SECTION 3: Executive Order No. MJF 98-29, signed on May 26, 1998, is terminated and rescinded.

SECTION 4: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

¹ Executive Order No. MJF 98-29, signed on May 26, 1998, also altered the composition of the Task Force. However, that Order is terminated and rescinded in Section 3 of this Order.

² See note 1.

³ See note 1.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the capitol, in the city of Baton Rouge, on this 16th day of March, 1999.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9904#013

EXECUTIVE ORDER MJF 99-10

Louisiana Highway 1 Project Task Force

WHEREAS, Executive Order No. MJF 98-46, signed on October 8, 1998, established the Louisiana Highway 1 Project Task Force (hereafter "Task Force");

WHEREAS, Executive Order No. MJF 99-2, signed on January 12, 1999, altered the composition of the membership of the Task Force¹; and

WHEREAS, it is necessary to amend Executive Order No. MJF 98-46, as amended by Executive Order No. MJF 99-2, to extend the reporting period of the Task Force;

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

SECTION 1: Section 3 of Executive Order No. MJF 98-46, as amended by Executive Order No. MJF 99-2,² is amended to provide as follows:

The Task Force shall submit a comprehensive written report to the governor; the House Committee on Transportation, Highways and Public Works; and the Senate Committee on Transportation, Highways and Public Works, by November 1, 1999.

SECTION 2: All other sections and subsections of Executive Order No. MJF 98-46, as amended by Executive Order No. MJF 99-2, shall remain in full force and effect.

SECTION 3: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

¹ Executive Order No. MJF 98-62, signed on November 10, 1998, and Executive Order No. MJF 98-64, signed on December 2, 1998, also altered the composition of the Task Force membership. However, both Orders have been terminated and rescinded. See Section 3 of Executive Order No. MJF 99-2.

² See note 1.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 16th day of March 1999.

M.J. "Mike" Foster
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9904#014

EXECUTIVE ORDER MJF 99-11

**Bond Allocation—Louisiana Local Governmental
Environmental Facilities and Community
Development Authority**

WHEREAS, pursuant to the Tax Reform Act of 1986 (hereafter "the Act") and Act 51 of the 1986 Louisiana Legislature, Executive Order No. MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1999 (hereafter "the 1999 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 1999 Ceiling; and

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

WHEREAS, the Louisiana Local Governmental Environmental Facilities and Community Development Authority has requested an allocation from the 1999 Ceiling to be used to finance the acquisition, construction, installation and equipping of a 39,900 square foot chemical manufacturing facility to be located on Davidson Road, Lake Charles, parish of Calcasieu, Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1999 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$4,500,000	Louisiana Local Government Environmental Facilities and Community Development Authority	Southern Ionics, Inc.

SECTION 2: The granted allocation shall be used only for the bond issue described in Section 1 and for the general

purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1999, provided that such bonds are delivered to the initial purchasers thereof on or before June 21, 1999.

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

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

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 23rd day March, 1999.

M.J. "Mike" Foster
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9904#015

EXECUTIVE ORDER MJF 99-12

Bond Allocation—Town of Pollack

WHEREAS, pursuant to the Tax Reform Act of 1986 (hereafter "the Act") and Act 51 of the 1986 Louisiana Legislature, Executive Order No. MJF 96-25 (hereafter "MJF 96-25") was issued on August 27, 1996 to establish

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 1999 (hereafter "the 1999 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 1999 Ceiling; and

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

WHEREAS, the town of Pollack, state of Louisiana, has requested an allocation from the 1999 Ceiling to be used to finance the acquisition, construction, installation and equipping of improvements and extensions to the waterworks and sewer systems located in the town of Pollack, parish of Grant, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

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

SECTION 1: The bond issue, as described in this Section, shall be and is hereby granted an allocation from the 1999 Ceiling as follows:

AMOUNT OF ALLOCATION	NAME OF ISSUER	NAME OF PROJECT
\$2,525,000	Town of Pollack State of Louisiana	Town of Pollack Waterworks and Sewer Systems

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

SECTION 3: The granted allocation shall be valid and in full force and effect through the end of 1999, provided that such bonds are delivered to the initial purchasers thereof on or before June 21, 1999.

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

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

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 23rd day March, 1999.

M.J. "Mike" Foster
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9904#016

EXECUTIVE ORDER MJF 99-13

Abstinence Education Project

WHEREAS, Executive Order No. MJF 98-11, signed on March 13, 1998, established the Louisiana Abstinence Education Project (hereafter "Abstinence Project");

WHEREAS, it is necessary to amend Executive Order No. MJF 98-11 in order to reestablish the Abstinence Project within the Office of the Governor;

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

SECTION 1: Section 1 of Executive Order No. MJF 98-11 is amended to provide as follows:

The Louisiana Abstinence Education Project (hereafter "Abstinence Project") is reestablished within the executive department, Office of the Governor.

SECTION 2: The third unnumbered paragraph in Section 5 of Executive Order No. MJF 98-11 is amended to read as follows:

The state coordinator shall annually submit to the governor, by January 1, a comprehensive report which addresses the fulfillment of the Abstinence Project's goals, as set forth in Section 2 of this Order, and its duties, as defined in Section 3 of this Order. Annual reports shall include all relevant comparative data and information relating to the effectiveness of the Abstinence Project and, based on available data and information, to the comparative effectiveness of the Abstinence Project to the abstinence education projects and/or programs of other states.

SECTION 3: All other sections and subsections of Executive Order No. MJF 98-11 shall remain in full force and effect.

SECTION 4: The provisions of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 26th day of March, 1999.

M.J. "Mike" Foster
Governor

ATTEST TO
BY THE GOVERNOR
Fox McKeithen
Secretary of State
9904#017

EXECUTIVE ORDER MJF 99-14

Office of Community Programs

WHEREAS, the governor annually hosts a Governor's Conference for the officers and employees of the executive branch of state government to direct their attention to issues on accountability and citizen services;

WHEREAS, the 1998 Governor's Conference produced recommendations about prioritizing the manner in which the state conducts business and improving the delivery of state services to the citizens of the state of Louisiana;

WHEREAS, the Office of the Governor has many agencies and/or divisions within it which provide a wide range of services for the citizens and local governments of the state of Louisiana; and

WHEREAS, coordinating the operation and delivery of the services provided by the agencies and/or divisions of the Office of the Governor through a single office is consistent with the recommendations developed at the 1998 Governor's Conference and will result in a more effective use of state funds;

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

SECTION 1: The Office of Community Programs (hereafter "Office") is established within the executive department, Office of the Governor.

SECTION 2: The Office shall be composed of the following agencies and divisions of the Office of the Governor:

- A. The Office of Disability Affairs (R.S. 46:2581, et seq.);
- B. The Office of Elderly Affairs (R.S. 46:931, et seq.);
- C. The Office of Indian Affairs (R.S. 46:2301, et seq.);
- D. The Office of Municipal Affairs;
- E. The Louisiana State Interagency Coordinating Council for Child Net (R.S. 17:1979 and R.S. 36.4(R));
- F. The Office of Rural Development (R.S. 3:314, et seq.);
- G. The Louisiana Abstinence Education Project (Executive Order No. MJF 98-11, as amended by Executive Order No. MJF 99-13);
- H. The Louisiana State Troops to Teachers Placement Assistance Program (Memorandum of Agreement dated February 2, 1995);
- I. The Office of Urban Affairs and Development (Executive Order No. MJF 96-47); and
- J. The Office of Women's Services (R.S. 46:2521, et seq.).

SECTION 3: The duties and functions of the Office shall include, but are not limited to, the following:

A. Coordinating, directing, and monitoring the manner in which the services of the agencies and/or divisions of the Office of the Governor that are listed in Section 2 of this Order are provided to the citizens and local governments of the state of Louisiana;

B. Promoting and coordinating legislative initiatives that are designed to improve the quantity, quality, and delivery of the state services provided for the benefit of the citizens and local governments of the state of Louisiana;

C. Disseminating information about state services and legislative initiatives to state, federal, and/or private agencies which provide services to the citizens and/or local governments of the state of Louisiana; and

D. Advising the governor on all issues related to state services that are provided for the benefit of citizens and/or local governments of the state of Louisiana.

SECTION 4:

A. A member of the governor's executive staff shall serve as the executive director of the Office. The executive director shall report to the governor, or the governor's designee.

B. The executive director shall be the appointing and budget authority for all the agencies and/or divisions of the Office of the Governor listed in Section 2 of this Order, with the exception of the Offices of Women's Services and Elderly Affairs.

C. The directors and/or executive directors of each of the agencies and/or divisions listed in Section 2 of this Order shall report directly to the executive director. However, the executive director of the Office of Urban Affairs and Development shall not be required to report to the executive director regarding matters related to the allocation of program funds.

D. The executive director shall prepare, and update as needed, reports and spreadsheets on all contract, loan and/or grant sources and on all loans, grants, and/or contracts that are issued and/or awarded by the agencies and/or divisions of the Office of the Governor listed in Section 2 of this Order and/or by any other governmental entity in the executive branch which is required to report to the governor by the Louisiana Constitution of 1974, as amended, or by legislative act. The executive director shall submit such reports and updated reports to the governor, the president of the Louisiana Senate, the speaker of the Louisiana House of Representatives, and the commissioner of administration.

SECTION 5: All entities in the executive branch of state government which are required by the Louisiana Constitution of 1974, as amended, or by legislative act to report to the governor, are required to report all available grant, loan, and/or contract funding sources to the Office.

SECTION 6: Support staff, facilities, and resources for the Office shall be provided by the Office of the Governor.

SECTION 7: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Office in implementing the provisions of this Order.

SECTION 8: 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 26th day of March, 1999.

M.J. "Mike" Foster
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9904#018

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Structural Pest Control Commission

Minimum Specifications for Termite Control Work (LAC 7:XXV.141)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 3:3203(A), the Commissioner of Agriculture and Forestry is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953 (B)] for the purpose of amending LAC 7:XXV.141.J.8.d - e and adding Subparts g - h regarding mandatory requirements for pest control operators making applications with baits and baiting systems.

The Formosan Termite is a public nuisance, a pest and a menace to homes and buildings, live trees, agricultural crops, electronic and communication cables, wooden bridges, railroad ties, pilings and other structures. Bait and baiting systems, if properly used, may be effective new tools in controlling or suppressing the Formosan Termite. Failure to properly place or monitor bait and baiting systems subject property owners to additional and needless destruction of property by Formosan Termites. Such destruction can render homes and other buildings unfit for habitation or use; weaken bridges, pilings or other structures to the point of collapse or disrupt vital communication systems. Any such destruction endangers human life and poses an imminent peril to the public health safety and welfare of the citizens of Louisiana.

The Commissioner of Agriculture and Forestry has, therefore, determined that these emergency rules are necessary to require pest control operators to properly monitor for Formosan Termites and to properly place toxicant delivery systems in order to protect life and property.

These rules and regulations become effective upon the Commissioner's signature, and shall remain in effect 120 days or until these rules are permanently adopted through the normal promulgation process.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§141. Minimum Specifications for Termite Control

Work

A. - J.8.c. ...

d. monitoring shall be used to detect the presence of subterranean termites in the soil. All delivery systems shall be inspected at regular intervals, not less than once monthly and data shall be recorded;

e. baits and baiting systems may be used as a stand-alone termite treatment only with written approval by LDAF;

f. baits and baiting systems may be used as a supplement to traditional ground termiticide treatments;

g. monitoring stations shall be placed, where soil is available, a minimum of twenty (20) feet apart around the perimeter of the structure;

h. toxicant delivery following label and labeling shall be placed in or in close proximity to each monitoring stations that are infested with live termites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:330 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:958 (November 1989), LR 20:644 (June 1994), LR 21:931 (September 1995), LR 23:1285 (October 1997), LR 25:000 (February 1999).

Bob Odom
Commissioner

9904#008

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)—Higher Education Scholarship and Grant Programs
(LAC 28:IV.301)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Tuition Opportunity Program for Students, LAC 28:IV.

The emergency rules are necessary to allow the Louisiana Office of Student Financial Assistance and state educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. The commission has, therefore, determined that these emergency rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective March 15, 1999, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28

EDUCATION

Part IV. Student Financial Assistance—Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

Merit Ranking Formula—a mathematical equation incorporating selected merit factors which is used to rank

eligible applicants in the priority by which competitive scholarships are to be awarded. As of July 1, 1997, the TOPS Teacher Award and Rockefeller State Wildlife Scholarship are the only programs in which applicants are competitively ranked. The following formulas for the merit ranking of scholarship applicants provide for the equating of scores for high school graduating seniors and college students.

a. Formula I—applies to applicants for the Rockefeller State Wildlife Scholarship with less than 24 hours of graded college credit and to applicants for the TOPS—Teacher Award with less than 48 hours of graded college credit:

$$\text{Merit Score} = \left(\left(\frac{\text{HSGPA}}{4.00} \right) \times 60 \right) \% \left(\left(\frac{\text{ACT}}{36} \right) \times 40 \right)$$

b. Formula II—applies to applicants for the Rockefeller State Wildlife Scholarship with 24 or more hours of graded college credit and to applicants for the TOPS—Teacher Award with 48 or more hours of graded college credit:

$$\text{Merit Score} = \left(\left(\frac{\text{College GPA}}{4.00} \right) \times 90 \right) \% \left(\left(\frac{\text{College Level}}{4} \right) \times 10 \right)$$

c. Formula III—applies to applicants for the TOPS Teacher Award. For those applicants majoring in math or chemistry, an additional 10 points are added to the merit score determined by Formula I or II, resulting in an adjusted merit score.

d. Applicants' merit scores are ranked in descending order with the applicant with the highest merit score ranked first. The number of applicants selected for award is dependent upon the amount of award funds available.

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 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:

Jack L. Guinn
Executive Director

9904#001

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of Management and Finance Division of Research and Development

Medicare Rural Hospital Flexibility Program—Critical Access Hospitals (LAC 48:1.7601-7615)

The Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development proposes to adopt the following emergency rule in the Medicare Rural Hospital Flexibility Program (MRHF) as authorized by the Balanced Budget Act of 1997 (Public Law 105-33) and pursuant to Title XVIII of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:953B(1) et seq.

This emergency rule will implement the Medicare Rural Hospital Flexibility Program (MRHF) to assist rural communities in improving access to essential health care services through the establishment of limited service hospitals and rural health networks. The Program creates the Critical Access Hospital (CAH) as a limited service hospital eligible for Medicare certification and reimbursement and supports the development of rural networks consisting of CAHs, acute care hospitals and other health care providers.

This action is necessary to avoid imminent peril to the public served by small rural hospitals facing financial problems or closure and to secure new federal funding through the Health Resources Services Administration (HRSA) rural health grant. It is estimated the expenditure necessary to implement this rule will be \$1,200 certification cost for each facility certified. Medicare will fund 90 percent of this cost and the State 10 percent. The additional expenditure of state general funds for the state fiscal year 1999 is estimated to be \$1,560. This emergency rule provides for the establishment of the process for designating CAHs.

Emergency Rule

Effective April 20, 1999, the Department of Health and Hospitals, Division of Research and Development will implement the Medicare Rural Hospital Flexibility Program (MRHF) creating the Critical Access Hospital (CAH) as a limited service hospital eligible for Medicare certification and reimbursement. To qualify as a CAH, the small rural hospital must complete the following licensing and certification process.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 76. Medicare Rural Hospital Flexibility Program (MRHF)

Subchapter A. Critical Access Hospitals

§7601. Definitions

A. The following words and terms, when used in this Chapter shall have the following meanings, unless the context clearly indicates otherwise:

CAH—Critical Access Hospital.

EACH/RPCH—Essential Access Community Hospital/Rural Primary Care Hospital—a limited service rural hospital program.

DR&D—Division of Research and Development.

EMS—Emergency Medical Services.

HCFA—Health Care Financing Administration.

HEALTH CARE NETWORK—an organization consisting of at least one CAH and one acute care hospital with agreements for patient referral, emergency/non-emergency transportation and other services as feasible.

HPSA—Health Professional Shortage Area designated by the federal Office of Shortage Designations.

HSS—Department of Health and Hospitals, Bureau of Health Services Financing, Health Standards Section.

MSA—Metropolitan Statistical Area.

MRHF—Medicare Rural Hospital Flexibility Program.

MUA—Medically Underserved Area designated by the federal Office of Shortage Designations.

Necessary Provider—a facility located in a primary care HPSA or MUA; or located in a parish in which the percentage of Medicare beneficiaries is higher than the percentage of Medicare beneficiaries residing in the state; or a facility located in a parish in which the percentage of the population under 100 percent of the federal poverty level is higher than the percentage of the state population under 100 percent of the federal poverty level.

Not-for-Profit—incorporated as a non-profit corporate entity.

Primary Care—basic ambulatory health services that provide preventive, diagnostic and therapeutic care.

Primary Care Physicians—includes general, family and internal medicine, pediatrics and obstetrics/gynecology

PRO—Peer Review Organization.

Public Hospital—hospital supported by public funds including city, service district and state hospitals.

Rural—must be a full county (parish) located outside of a Metropolitan Statistical Area, as defined by the Office of Management and Budget.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7603. Criteria for Designation as a CAH

A. A hospital must submit an application to the DR&D and must meet the following criteria, or affirm that it can meet these criteria at the time of certification, to be designated as a CAH:

1. be a not-for-profit or public hospital;
2. be currently participating in the Medicare program and meet applicable conditions of participation;
3. be located in a rural area;
4. a. be located more than a thirty-five (35)-mile drive, or a fifteen (15)-mile drive in mountainous terrain or areas with secondary roads, from the nearest hospital or CAH; OR
b. be certified as a Necessary Provider by meeting at least one of the following:
 - i. be located in a primary care HPSA or a MUA;
 - ii. be located in a parish in which the percentage of Medicare beneficiaries is higher than the percentage of Medicare beneficiaries residing in the state;
 - iii. be located in a parish in which the percentage of the population under 100 percent of the federal poverty level is higher than the percentage of the state population under 100 percent of the federal poverty level.
- c. Provides not more than 15 acute care inpatient beds, meeting such standards as the Secretary may establish, for providing inpatient care for a period not to exceed 96 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions), except that a peer review organization or equivalent entity may, on request, waive the 96-hour restriction on a case-by-case basis.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7605. Services and Staffing

A. The facility makes available 24-hour emergency medical care services. This is to include the provision of immediate availability of on-line medical control.

B. The facility meets the staffing requirements that apply to rural hospitals (as found in section 1861(e) of the Social Security Act), except that:

1. the facility need not meet hospital standards regarding the number of hours per day or days per week in which it must be open and fully staffed, except as required to make emergency medical care services available and to have nursing staff present if an inpatient is in the facility;
2. the facility may provide the services of a dietitian, pharmacist, laboratory technician, medical technologist, and/or radiological technologist on a part-time, off site basis; and
3. inpatient care may be provided by a physician assistant, nurse practitioner, or clinical nurse specialist, subject to the oversight of a physician who need not be present in the facility but immediately available in accordance with state requirements for scope of practice.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7607. Network Membership

A. The facility is a member of a rural health network and provides the following:

1. documentation of agreements with at least one hospital that is a member of the network for:
 - a. patient referral and transfer;
 - b. development and use of communications systems (including, where feasible, telemetry systems and systems for electronic sharing of patient data); and
 - c. provision of emergency and non-emergency transportation between the CAH and the hospital; and
2. documentation of an agreement for credentialing and quality assurance with at least one of the following:
 - a. a hospital that is a member of the network; or
 - b. a professional review organization (PRO) or equivalent entity.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7609. Application Submission and Review

A. A hospital that wishes to be designated as a CAH is required to submit an application to the DR&D. Application forms may be requested and submitted by interested hospitals at any time following HCFA approval of the State's Rural Health Care Plan and Application.

B. On receipt of an application, the DR&D will conduct a review to determine the eligibility of the applicant hospital for

conversion and consistency with the criteria for designation detailed in §7603.

C. The supporting information to be included with the application is:

1. documentation of public or not-for-profit status;
2. board resolution to seek CAH certification;
3. documentation of Medicare participation;
4. notification from State Office of Primary Care and Rural Health that location is in a HPSA or MUA;
5. affirmation that 24-hour Emergency Medical Care services and medical control agreements are available including information on staffing arrangements;
6. documentation that facility meets rural hospital staffing requirements with the following exceptions:
 - a. the facility need not meet hospital standards regarding the number of hours per day or days per week in which it must be open and fully staffed, except as required to make emergency medical care services available and to have nursing staff present if an inpatient is in the facility;
 - b. the facility may provide the services of a dietitian, pharmacist, laboratory technician, medical technologist, and/or radiological technologist on a part-time, off site basis; and
 - c. inpatient care may be provided by a Physician Assistant, Nurse Practitioner, or Clinical Nurse Specialist, subject to the oversight of a physician who need not be present in the facility but must be immediately available in accordance with state requirements for scope of practice.
7. copy of needs assessment, if available;
8. copy of strategic plan for conversion;
9. copy of financial feasibility assessment.

D. Decision. If an application is complete, and all supporting documentation provided, the DR&D will provide written notice to the applicant hospital.

1. If the application and required documentation supports conversion to a MRHF, after the effective date of the published rule, the DR&D will provide written notice of the designation to the applicant hospital and HSS.
2. If the application is incomplete or otherwise insufficient to allow designation, the DR&D will provide written notice to the applicant outlining the actions necessary to correct the deficiencies. The hospital may then address the deficiencies and resubmit its application.

E. Once designated, a hospital may apply to the Bureau of Health Services Financing, Health Standards Section (HSS) of the Department of Health and Hospitals for an on-site survey.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7611. Technical Assistance

A. The DR&D is available to furnish basic technical assistance to hospitals and communities interested in CAH

conversion, such as providing program information, helping with interpretation and completion of the application for designation, and identifying other sources of assistance and information.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7613. Program Monitoring and Evaluation

A. Ongoing monitoring and evaluation of the program will be conducted by the Quality Management Section of the DR&D.

1. Strengths and weaknesses of the program and state policy affecting CAHs will be assessed, with the goal of identifying problem areas and developing solutions.
2. Results will be reported to the DR&D Director who will assign program staff to work with other state agencies and interested parties to determine the necessity of changes and updates to the Plan and state policy.
3. All Plan changes will be forwarded to HCFA for review and approval.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

§7615. Process for Conversion Back to a Hospital

A. If a facility has been certified as a CAH and wishes to convert back to a hospital or to another type of provider, the facility must go through the certification process appropriate for that provider type.

1. Conversion to a hospital will not require compliance with the most recent life safety codes if the facility had been "grandfathered" under previous codes. Such facilities will be required, however, to meet the most recent applicable conditions of participation.

2. CAHs considering conversion back to a hospital should notify the DR&D and contact the Bureau of Health Services Financing, HSS for more information.

AUTHORITY NOTE: Promulgated in accordance with the Balanced Budget Act of 1997 (PL 105-33) and Title XVIII of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, LR 25:

Interested persons may submit written comments to Carolyn Maggio, Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, Post Office Box 2870, Baton Rouge, Louisiana 70821-2870.

David W. Hood
Secretary

9804#028

DECLARATION OF EMERGENCY

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

Hospital Neurological Rehabilitation
Program—Reimbursement Methodology

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing previously adopted a rule which established the prospective reimbursement methodology for an Intensive Neurological Rehabilitation Care Services Program in a hospital setting (*Louisiana Register* Volume 19, Number 7). The reimbursement methodology provided for annual rate adjustments based on financial audits of the facility's actual cost. The Department has determined that it is necessary to amend the reimbursement methodology contained in the July 20, 1993 rule by discontinuing the automatic application of an inflationary adjustment to the prospective rates for hospital intensive neurological rehabilitation care services. The subsequent application of the inflationary adjustment to the reimbursement rates for these hospital services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

Public notice of this action was provided in the major Statewide newspaper publications and promulgated as an emergency rule (*Louisiana Register*, Volume 24, Number 12).

This subsequent emergency rule shall continue the provisions established by the December 1998 emergency rule.

Emergency Rule

Effective for May 1, 1999 and after, the Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology for Hospital Intensive Neurological Rehabilitation Care Program contained in the July 20, 1993 rule by discontinuing the automatic application of an inflationary adjustment to the prospective rates for intensive neurological rehabilitation care services. The subsequent application of the inflationary adjustment to the reimbursement rates for these hospital services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

David W. Hood
Secretary

9904#041

DECLARATION OF EMERGENCY

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

Inpatient Hospital Reimbursement—Medicare
Part A Claims

The Department of Health and Hospitals, Bureau of Health Services Financing is adopting the following emergency rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq. and pursuant to Title XIX of the Social Security Act and as directed by Act 19 (General Appropriation Act) of the 1998 Regular Session of the Louisiana Legislature which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening, utilization review, and other measures as allowed by federal law". This emergency rule is adopted in accordance with the Administrative Procedure Act R.S. 49:950 et seq. and shall be in effect for the maximum allowed under the Administrative Procedure Act or until adoption of the rule whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing currently provides reimbursement for full co-insurance and deductibles for Medicare Part A claims for inpatient hospital services. Section 1902(a)(10) of the Social Security Act provide States flexibility in the payment of Medicare cost-sharing for dually eligible Medicare/Medicaid recipients who are not Qualified Medicare Beneficiaries (QMBs). Section 4714 of the Balanced Budget Act of 1997 clarifies that States have flexibility in complying with the requirements to pay Medicare cost-sharing for Qualified Medicare Beneficiaries and the protections against payment liability for QMBs. Section 4714 states that "a State is not required to provide any payment for any expenses incurred relating to payment for deductibles, coinsurance, or copayments for Medicare cost-sharing to the extent that payment under Title XVIII for the service would exceed the payment amount that otherwise would be made under the State plan under this title for service if provided to an eligible recipient other than a Medicare beneficiary."

When a State's payment for Medicare cost-sharing for an item or service rendered to a dually eligible Medicare/Medicaid recipient or a Qualified Medicare Beneficiary is reduced or eliminated to limit the amount under Title XVIII that the beneficiary may be billed or charged for the service, the amount of payment made under Title XVIII plus the amount of payment (if any) under the Medicaid State Plan shall be considered to be payment in full for the service.

The beneficiary does not have any legal liability to make payment for the service.

The Bureau has determined that it is necessary to limit the reimbursement of Medicare Part A claims for inpatient hospital services rendered to dually eligible Medicare/Medicaid recipients and QMBs to the Medicaid maximum payment. However, the reimbursement of Medicare Part A claims for inpatient hospital services in small rural hospitals as defined in state law shall not be limited to the Medicaid maximum payment. This change is necessary to avoid an anticipated budget deficit in state fiscal year 1998-1999. It is estimated that implementation of this rule will reduce expenditures in the Medicaid Program by approximately \$5,666,529 for state fiscal year 1998-1999.

Emergency Rule

Effective for dates of admission on or after April 1, 1999, the Department of Health and Hospitals, Bureau of Health Services Financing shall limit the reimbursement for Medicare Part A claims for inpatient hospital services rendered to dually eligible Medicare/Medicaid recipients and Qualified Medicare Beneficiaries to the Medicaid maximum payment. Small rural hospitals as defined in state law shall be exempt from this limitation on payment of Medicare Part A claims to the Medicaid maximum payment. If the Medicaid payment is reduced or eliminated as a result of applying the limit of the Medicaid maximum payment, the amount of the Medicare payment plus the amount of the Medicaid payment (if any) shall be considered to be payment in full for the service. The recipient does not have any legal liability to make payment for the service.

Interested persons may submit comments to the following address: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding this emergency rule. A copy of this emergency rule is available at parish Medicaid offices for review by interested parties.

David Hood
Secretary

9904#010

DECLARATION OF EMERGENCY

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

Inpatient Psychiatric Services
Reimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will adopt the following rule in the Medical Assistance Program as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule which established the prospective reimbursement methodology

for inpatient psychiatric services in a free-standing psychiatric hospital or a distinct part psychiatric unit in an acute care hospital (*Louisiana Register*, Volume 19, Number 6). The reimbursement methodology for inpatient psychiatric services provided for an annual adjustment to the reimbursement rate. Therefore, the Department has determined that it is necessary to amend the reimbursement methodology for inpatient psychiatric services contained in the June 20, 1993 rule by discontinuing the automatic application of the inflationary adjustment to the current reimbursement rates for inpatient services in a free-standing psychiatric hospital or distinct part psychiatric unit services. The subsequent application of the inflationary adjustment for inpatient psychiatric services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

Public notice of this action was provided in the major statewide newspaper publications and promulgated as an emergency rule (*Louisiana Register*, Volume 24, Number 12).

This subsequent emergency rule shall continue the provisions established by the December 1998 emergency rule.

Emergency Rule

Effective for May 1, 1999 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the reimbursement methodology for inpatient psychiatric services contained in the June 20, 1993 rule by discontinuing the automatic application of an inflationary adjustment to the prospective rates for inpatient psychiatric services.

The subsequent application of the inflationary adjustment for inpatient psychiatric services shall be contingent on the allocation of funds by the Legislature in the Appropriations Bill.

David W. Hood
Secretary

9904#042

DECLARATION OF EMERGENCY

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

Pharmacy Program—Average Wholesale Price

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 (General Appropriation Act) of the 1998 Regular Session of the Louisiana Legislature which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission

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

The Department of Health and Hospitals, Bureau of Health Services Financing published a rule effective April 20, 1990, regarding the reimbursement of drugs in the Louisiana Medicaid Pharmacy Program (*Louisiana Register*, Volume 16, No. 4). This rule established standards for payment for pharmacy services which included the definition of *Estimated Acquisition Costs* as the modified average wholesale price of the drug dispensed, identified by the manufacturer number, product number, and package number usually purchased by a provider, from a supplier whose products are generally available to all pharmacies and reported in one or more national compendia. Repackaged drug products supplied through co-ops, franchises, or other sources not readily available to other providers shall not be used to estimate provider acquisition cost. In such instances, the average wholesale price for the drug product used by the repackager identified by the manufacture number, product number, and largest reported package size in one or more national compendia shall be utilized by the agency to estimate acquisition cost. *Modified* as it is used in this rule is defined as the lower of:

1. Average Wholesale Price (AWP) minus 10.5 percent for single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost (MAC) or Federal Upper Limit and those prescriptions subject to MAC overrides based on the physician's certification that a brand name product is medically necessary;
2. Louisiana's Maximum Allowable Cost limitations; or
3. Federal Upper Limits.

The Department seeks to limit payments for prescription drugs by amending the Estimated Acquisition Cost formula from AWP minus 10.5 percent to AWP minus 15 percent for all single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost or Federal Upper Limit and those prescriptions which are subject to MAC overrides based on the physician's certification that a brand name product is medically necessary for a particular recipient.

This action is necessary to avoid a budget deficit in the Pharmacy Program. It is estimated that this action will reduce expenditures in the Pharmacy Program by approximately \$4,895,921 for state fiscal 1998-1999.

Emergency Rule

Effective for dates of service on or after April 1, 1999, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will limit payments for prescription drugs to the lower of:

1. Average Wholesale Price (AWP) minus 15 percent for all single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost (MAC) or Federal Upper Limit and those prescriptions subject to MAC overrides based on the physician's certification that

a brand name product is medically necessary plus the Maximum Allowable Overhead Cost (dispensing fee);

2. Louisiana's Maximum Allowable Cost limitation plus the Maximum Allowable Overhead Cost;
3. Federal Upper Limits plus the Maximum Allowable Overhead Cost; or
4. provider's usual and customary charges to the general public.

Interested persons may submit written comments to the following address: Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding this emergency rule. A copy of this rule is available in the Medicaid parish offices for review by interested parties.

David W. Hood
Secretary

9904#011

DECLARATION OF EMERGENCY

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

Pharmacy Program—Average Wholesale Price (Repeal)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following emergency rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act and as directed by Act 19 (General Appropriation Act) of the 1998 Regular Session of the Louisiana Legislature which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to, pre-certification, pre-admission screening, and utilization review, and other measures as allowed by federal law." This emergency rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. and shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted an emergency rule effective April 1, 1999 to amend the reimbursement methodology for prescription drugs in the Louisiana Medicaid Pharmacy Program. This rule limited payments for prescription drugs by amending the Estimated Acquisition Cost formula from Average Wholesale Price (AWP) minus 10.5 percent to AWP minus 15 percent for all single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost or Federal Upper Limit and those prescriptions which are subject to MAC overrides based on

the physician's certification that a brand name product is medically necessary for a particular recipient.

As a result of a legislative oversight hearing, the Department has been directed to withdraw this emergency rule. Therefore, the following emergency rule is being adopted to repeal the April 1, 1999 emergency rule that amended the reimbursement for prescription drugs by limiting payment for the Estimated Acquisition Cost to AWP minus 15 percent.

Emergency Rule

Effective April 8, 1999, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repeals the April 1, 1999 emergency rule amending the reimbursement for prescription drugs by limiting payment for the Estimated Acquisition Cost to average wholesale price (AWP) minus 15 percent for all single source drugs (brand name), multiple source drugs which do not have a State Maximum Allowable Cost or Federal Upper Limit and those prescriptions which are subject to MAC overrides based on the physician's certification that a brand name product is medically necessary for a particular recipient. This April 1, 1999 emergency rule was published in the March 31, 1999 editions of the state's major newspapers.

David W. Hood
Secretary

9904#049

DECLARATION OF EMERGENCY

Department of Social Services Office of Rehabilitation Services

Vocational Rehabilitation Policy Manual—Eligibility and Ineligibility/Services (LAC 67:VII.109 and 117)

The Department of Social Services, Louisiana Rehabilitation Services, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), to amend the following rule in the Vocational Rehabilitation Services Policy Manual, Sections: Eligibility and Ineligibility and Vocational Rehabilitation Services policy.

The rule governing Eligibility and Ineligibility outlines the criteria for eligibility and ineligibility for vocational rehabilitation services.

The rule governing Vocational Rehabilitation Services outlines the vocational rehabilitation services that LRS is authorized to provide in accordance with the Rehabilitation Act.

This emergency rule must be effective March 24, 1999. LRS is invoking this Emergency Rule to maintain compliance with the Rehabilitation Act and to avoid deficit spending. A five year actual spending pattern indicates that vocational rehabilitation service costs have increased by more than 20% over the past five years. LRS' Vocational Rehabilitation Program operates as a "capped" eligibility program and is mandated by the Rehabilitation Act and federal regulations to first provide services to those individuals with the most

significant disabilities prior to providing services to other individuals, and to maintain policies covering the nature and scope of vocational rehabilitation services. Therefore, LRS must take this action to ensure that it meets the mandate of the Rehabilitation Act and to avoid deficit spending. The entire Vocational Rehabilitation Policy Manual is being promulgated with a Notice of Intent that will be published April 20, 1999. This Notice of Intent contains this emergency rule in its text. This emergency rule shall remain in effect for 120 days, or until the effective date of the final rule for the Vocational Rehabilitation Policy Manual, whichever occurs first.

The LRS policy manuals are referenced in LAC 67:VII as follows.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. General Provisions

§109. Eligibility and Ineligibility

A. - F.4.a.i. ...

ii. The individual's significant physical or mental impairment seriously limits four (4) or more functional capacity areas;

F.4.a.iii. - b.i. ...

ii. The individual's severe physical or mental impairment seriously limits three (3) functional capacity areas.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 19:891 (September 1991), amended LR 20:317 (March 1994), LR 21:191 (February 1995), LR 22:993 (October 1996), LR 23:994 (August 1997), LR 25:

§117. Vocational Rehabilitation Services

A. - C.2.m. ...

D. Scope of Services in Community Rehabilitation Programs (CRP)

1. Cost Effectiveness

a. In consideration of the cost-effective provision of services in Community Rehabilitation Programs, LRS shall first use publicly-supported Community Rehabilitation Programs to provide assessment services, both for diagnostic purposes and in the provision of trial work periods, before using either private or private non-profit Community Rehabilitation Programs.

b. The only exceptions shall be as follows:

i. The service in a publicly supported CRP is not available.

ii. Provision of the service in a publicly supported CRP would create an extreme hardship for the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 25:

Madlyn B. Bagneris
Secretary

9904#009

DECLARATION OF EMERGENCY

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

Trapping Season Extension

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency provisions to extend seasons and R.S. 56:259(A) which allows the Commission to extend

trapping in any area of the state each year and under the authority of a Declaration of Emergency adopted by the Commission on September 3, 1998, which gives the Secretary of the Department of Wildlife and Fisheries authority to extend or shorten the trapping season; the Secretary does hereby extend the 1998/1999 trapping season until official sunset March 31, 1999.

James H. Jenkins, Jr.
Secretary

9904#024

Rules

RULE

Department of Civil Service Board of Ethics

Lobbyist Disclosure Act (LAC 52:I.1901-1905)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Civil Service, Louisiana Board of Ethics, promulgated amendments and changes to the Rules for the Board of Ethics regarding the administration and enforcement of the provisions of the Lobbyist Disclosure Act as authorized by Louisiana Revised Statute 42:1132D.

Title 52 ETHICS

Part I. Board of Ethics

Chapter 19. Lobbyist Disclosure Act

§1901. In General

The Lobbyist Disclosure Act provides that the Board of Ethics shall administer and enforce the provisions of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:624 (April 1999).

§1902. Filing Fees

A. A fee of \$10 shall be remitted to the board with each registration or supplemental registration required to be filed by a lobbyist.

B. All fees paid in compliance with this Chapter shall be by check or money order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:264 (April 1999).

§1903. Registration and Reporting; Forms

A. The staff shall prepare and provide upon request, forms for the registration and reporting of lobbyists. The forms may be provided on paper or in electronic format.

B. No registration or report filed by a lobbyist will be dated and filed with the board unless the registration or report is on the proper form as provided by the staff.

C. The method of signature and notarization shall be as provided in §1803.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:624 (April 1999).

§1904. Registration and Reporting; Dating, Numbering and Filing

The staff shall establish a procedure for the dating, indexing, and filing of all Lobbyist registration and Lobbyist Disclosure reports received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:624 (April 1999).

§1905. Automatic Termination of Registration for Failure to Renew; Retroactivity

If a registered lobbyist fails to renew his registration by January 31 of the applicable year, then his registration shall be terminated retroactively as of December 31 of the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:1134(A).

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Board of Ethics, LR 25:624 (April 1999).

R. Gray Sexton
Ethics Administrator

9904#012

RULE

Board of Elementary and Secondary Education

Bulletin 1191—School Transportation Handbook (LAC 28:XXVII.Chapters 1-33)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education adopted revised Bulletin 1191, promulgated in LR 2:198 (June 1976), referenced in LAC 28:I.915.A. Bulletin 1191 is designed to provide information and direction to local school system personnel in school transportation in Louisiana, and minor changes are being made to further clarify the contents and the intent of policies.

Title 28

EDUCATION

Part XXVII. Bulletin 1191—School Transportation Handbook

(Editor's Note: Bulletin 1191 was adopted by the Board of Elementary and Secondary Education in LR 2:187 (June 1976) and amended LR 5:168 (July 1979), LR 8:406 (August 1982), LR 11:252 (March 1985), LR 14:10 (January 1988), LR 15:468 (June 1989), LR 19:171 (February 1993), LR 19:890 (July 1993), and LR 22:809 (September 1996). This present revision is being published in codified form, hence historical notes will reflect a history, by section, from this time forward.)

Chapter 1. Introduction

§101. Acknowledgments

A. This handbook was developed by the Louisiana Department of Education, with the assistance and cooperation of the Louisiana Association of School Transportation Officials and the Louisiana Transportation Improvement Committee. It is designed to provide information and direction to local school system personnel involved in school transportation in Louisiana.

B. The Department of Education is especially indebted to these two Transportation Supervisors for their committee leadership:

1. Diana "Dee" Duhon, Vermilion Parish, Chairperson; and

2. Felix Thomas, Grant Parish, Co-Chairman.

C. Appreciation is also extended to the Transportation Supervisors and others who have donated their valuable time and effort to the revision of this important document:

1. Shelton Eubanks, Allen Parish;
2. George Horne, Horne Enterprises;
3. Jimmy Sibille, St. Landry Parish;
4. Dale Boudreaux, Jefferson Parish.

D. Additional information is contained in Louisiana Department of Education Bulletin 1475 (Operational and Maintenance Procedures), Bulletin 1213 (Minimum Standards for School Buses in Louisiana), and Bulletin 1886 (Special Education Transportation); in the Louisiana Commercial Driver's License Program; in various federal and state statutes and regulations, as well as in local policies and directives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:624 (April 1999).

§103. Purpose

A. To set forth policies and to reference statutes which govern the operation of transportation services.

B. To provide local school systems with information to be used in establishing pupil transportation policies.

C. To provide foundations for continued improvement in the overall transportation program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:625 (April 1999).

Chapter 3. State Administration

§301. Role of State Supervisor

A. Acting under the authority of the State Board of Elementary and Secondary Education, the State Superintendent of Education is responsible for carrying out such policies as may be adopted by the Board. The legal responsibilities of the State Department of Education are defined by Louisiana law or policies of the State Board of Elementary and Secondary Education.

B. Aside from matters concerned with the financial aspects imposed upon it by law, the primary responsibility of the State Department of Education in pupil transportation is to provide strong leadership and assistance in the development of a comprehensive pupil transportation program for statewide application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:625 (April 1999).

§303. Responsibilities

A. The responsibilities listed below are assumed directly by the State within the framework of a total cooperative effort whereby the state and the local school system work together to ensure a safe, efficient and economical transportation system.

1. Develop and implement clear and concise pupil transportation policies.

2. Develop and implement a statewide system for the management of pupil Transportation.

3. Assist local school systems to promote pupil transportation safety programs utilizing the community, the media, law-enforcement agencies and other agencies concerned with pupil transportation. (See also Bulletins 1475: Operational and Vehicle Maintenance Procedures and Bulletin 1886: Special Education Transportation Guide.)

4. Develop and implement educational programs and materials for school bus drivers, transportation supervisors, school administrators and school bus passengers.

5. Monitor and assist local school systems to evaluate transportation systems and provide direction where applicable.

6. Plan and conduct workshops, seminars and/or conferences for pupil transportation personnel.

7. Coordinate services with other divisions of State Government to ensure adherence to all federal and state regulations.

8. Establish chassis, body and equipment standards that would be conducive to better and safer bus performance. (See Bulletin 1213: Minimum Standards for School Buses in Louisiana.)

9. Provide advisory services to local school systems on technical issues relative to the operation of school transportation programs.

10. Collect and compile appropriate statistical data and maintain a cost accounting system for all expenditures in the area of pupil transportation.

11. Study and make recommendations regarding legislation and appropriate research in the field of pupil transportation.

12. Encourage institutions of higher education throughout the state to provide courses in pupil transportation operation and safety.

13. Develop and direct a statewide management information system for the collection and analysis of pupil transportation data (operational costs, accidents and injuries, driver certification, etc.)

14. Develop manuals or handbooks for local pupil transportation supervisors, school administrators and bus drivers containing instructions for implementation of the state's pupil transportation policy and state pupil transportation regulations.

15. Annually visit local school systems to evaluate transportation systems and provide direction as necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:625 (April 1999).

Chapter 5. Local Administration

§501. Role of Local School Board

A. Local school boards are empowered with all authority except those specifically reserved for the state. Duties and responsibilities are as follows.

1. Oversee purchase and ownership of buses.

2. Establish bus routes.

3. Employ drivers in accordance with all applicable statutes and policies and enter written employment agreements.

4. Operate and maintain student transportation services.
5. Determine policy not specifically regulated.
6. Establish a system for the supervision of the local transportation program.

7. Provide for pre-service and inservice training of school bus drivers in accordance with the guidelines established by the Louisiana Department of Education.

8. Maintain a safe, efficient and economical school transportation program.

9. Develop and implement a plan for the evacuation of school(s) requiring the use of school buses in case of an emergency or natural disaster.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:625 (April 1999).

§503. Role of Local Superintendent

A. The local superintendent, who has the authority of the local school board, is responsible for the administration of the overall local school transportation program. Duties and responsibilities are as follows.

1. Present recommendations to the local school board on all phases of the transportation program.

2. Administer and follow through on all policies affecting the transportation program.

3. Recommend and/or appoint personnel to supervise the school transportation program.

4. Develop, adopt and enforce rules and regulations governing students riding school buses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:626 (April 1999).

§505. Role of Local Transportation Supervisor

A. The local supervisor, who receives authority from the local superintendent and local board, has the following duties.

1. Recommend employment, suspension and/or termination of bus drivers and bus attendants.

2. Recommend prospective bus routes.

3. Recommend rules and regulations affecting school transportation.

4. Assist local school principals, bus drivers, pupils and parents in resolving transportation issues.

5. Arrange, conduct, supervise and/or monitor pre-service and inservice training of school bus drivers.

6. Keep records and prepare reports relative to local school bus transportation services.

7. Investigate and report accidents and other problems associated with pupil transportation programs. Appoint an accident review board to assist transportation personnel in investigating all school bus accidents to determine preventability and recommend remedial action in accordance with Board of Elementary and Secondary Education policy. (See Definition of Terms, Chapter 31)

8. Supervise and evaluate all school transportation personnel as authorized by the local system's superintendent.

9. Present recommendations to the local superintendent on all phases of the pupil transportation program.

10. Ensure compliance with semi-annual vehicle inspections and coordinate additional spot inspections as may be deemed appropriate.

11. Exercise discretionary powers which are necessary and proper for the performance of the duties of the Supervisor of Transportation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:626 (April 1999).

§507. Role of School Principal

A. The principal, as the representative of the local school board at the school level, is responsible for the supervision of all buses serving the school. As a part of his/her duties, the principal should maintain close contact with each school bus driver, and assist bus drivers as much as possible in reaching the handling of any disciplinary problems. It is the principal's responsibility to work with the drivers through frequent meetings where problems concerning the transportation program can be discussed. Equally important is the principal's responsibility to inform teachers of their roles in safe transportation and to assist them in developing a classroom program that will result in better understanding on the part of both pupils and parents as to their responsibility in the successful program of transportation. The principal should be given authority to act on matters concerning the transportation program in the same manner as with other supervisory duties. The principal responsible for the collection of transportation information from each bus driver, and for the transmittal of such information to the local transportation supervisor. He/she is responsible for the promotion of safety instruction among bus drivers, an important factor in a successful pupil transportation program. The principal has the following specific duties and responsibilities.

1. Be responsible for handling disciplinary problems.

2. Maintain contact with drivers to handle individual transportation problems and promote safety instruction.

3. Conduct meetings with teachers to inform teachers of their role in school transportation services.

4. Develop safe loading and unloading zones and procedures for each school.

5. Provide adequate supervision for pupils whose bus schedules require them to arrive at school before classes begin and/or remain after classes terminate, and supervision for passenger loading and unloading at school.

6. Collect transportation information from drivers and transmit it to the local supervisor and/or superintendent.

7. Develop and ensure compliance with mandatory classroom programs promoting safe transportation habits. (See Chapter 15)

8. Conduct emergency evacuation drills as required. (See Chapter 15)

9. Inform students and parents of rules and regulations adopted by the local school system.

10. Maintain verification on file that students and parents have read, understand and agree to abide by the school bus transportation rules and regulations as a condition for services being rendered.

11. Provide to drivers the names, addresses and emergency information for all passengers. (See also Bulletin 1886: Special Education Transportation Guide with respect to providing information pertaining to passengers with special needs.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:626 (April 1999).

§509. Role of School Staff

A. Teachers must help students recognize their responsibilities within the school transportation program. The fundamental responsibility of teachers with respect to the school transportation program is to develop desirable attitudes toward safety within their students to ensure proper behavior when the students are passengers on the school bus.

1. Be thoroughly familiar with local rules and regulations for the students riding the bus with particular emphasis on the school bus stop law and emergency evacuation procedures.

2. Provide classroom instruction in safe riding practices as directed by the principal. Such instructions should be given during the first week of each semester and periodically during the school year as needed.

3. Encourage students to obey safety regulations while waiting for, boarding, riding, unloading and moving away from the bus.

4. Maintain control of the bus loading zones during loading and unloading, as assigned by local school administrators.

5. Maintain the discipline of students on field trips and while on any extra-curricular activities requiring school bus transportation.

6. Prepare passenger rosters and seating charts for students participating in all activity trips.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:627 (April 1999).

§511. Role of School Bus Driver

A. The school bus driver has the most important role in the transportation program, transporting children safely to and from school. The bus driver is responsible to the parish school board, the superintendent, the transportation supervisor and the principal for all actions relating to the safe and efficient handling of the bus.

1. Have concern for the *safety* of the children. (Bus drivers are morally, as well as legally, responsible for transporting children using every precaution for maximum protection.)

2. Conduct pre-trip, en-route and post-trip checks on the vehicle and its special equipment. Particular attention should be given to checking for passengers who may have remained on board after each run or trip has been completed.

3. Know the policies of the school board concerning transportation.

4. Know state and local traffic laws and ordinances governing motor vehicle operation.

5. Participate in all required meetings, conferences and training courses to improve transportation skills.

6. Maintain proper care, repair and inspection of the bus.

7. Complete and submit required reports within specified time lines.

8. Be punctual and reliable in the operation of assigned routes.

9. Avoid the use of obscene language, tobacco, alcohol and narcotic drugs while operating bus. (*Commercial Driver License DOT regulations and Drug Free School Zone regulations must be followed.*)

10. Instruct passengers on all local and state rules and regulations and maintain orderly conduct.

11. Use standard school bus behavior report form as required.

12. Maintain good relations with school and home, central office, and general public. (*See Bulletin 1475 for detailed information.*)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:627 (April 1999).

§513. Role of Bus Attendant or Aide

A. The special needs bus attendant, or aide, is a very important member of the transportation team. With the bus driver, the attendant shares the responsibility for safely transporting passengers to and from school and school-related activities. Special training is required for persons placed in this important position, and personnel selection should be made with great care. Chapter 21 of this bulletin and Bulletin 1886 (Special Education Transportation Guide) contains a more comprehensive description of job performance requirements, but the basic requirements are listed below.

1. Be on the bus route at all times during the bus route, except as authorized by the Transportation Department.

2. Occupy a seat on the bus where student riders can easily be assisted.

3. Ensure that required protective safety devices are in use and are fastened properly. (In instances when an attendant is not available, this shall be the responsibility of the bus driver.)

4. Assist such students on and off the bus at school, at designated bus stops, and otherwise when it is necessary for their safe entrance and exit from the bus.

5. Arrange for a substitute bus attendant in the event the regularly assigned attendant must be absent, unless local procedures specify another procedure.

6. Assist the driver with post-trip inspection procedures, checking especially for passengers, special equipment, medication, etc. that may have been left on board the bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:627 (April 1999).

§515. Role of Parents

A. Parents should be informed of and should understand their responsibility in working with the bus driver and school system personnel for the welfare and safety of their children. Also, emphasis should be placed on the problems involved with safe transportation and the extent of responsibility placed on bus drivers who are transporting their children.

1. Be familiar with and follow local board and school level policies for school bus transportation.

2. Have children ready and at their designated pickup points along the route.

3. Cooperate with the school and bus driver in teaching children safety precautions and good manners and habits for school bus passengers.

4. Assist when there are disciplinary problems.

5. Avoid detaining the driver on the route.

6. Avoid contacting drivers to change schedules, routes assignments, bus stops, etc. (If a problem arises contact the principal or Supervisor of Transportation.)

7. Assist the school district in monitoring safe access to passengers by keeping bus loading and unloading zones free of parked vehicles, trash or debris, by keeping vegetation trimmed, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:627 (April 1999).

§517. Rules for School Bus Riders

A. A school bus with undisciplined passengers is a hazardous bus. The misbehavior of the students can lead to accidents. The driver must concentrate on the driving task at hand and cannot be expected to constantly discipline the students while the bus is in motion. Therefore, for the safe operation of the school bus, students should be aware of and obey the following safety rules.

1. Cooperate with the driver; your safety depends on it.

2. Be on time; the bus will not wait.

3. Cross the road cautiously under the direction of the driver when boarding and leaving the bus.

4. Follow the driver's instructions when loading and unloading.

5. Remain quiet enough not to distract the driver.

6. Have written permission and be authorized by the principal to get on or off at a stop other than the designated stop.

7. Remain seated at all times when the bus is in motion.

8. Keep arms, head or other objects inside the bus at all times.

9. Refrain from throwing objects in the bus or out of windows and doors.

10. Use emergency exits only for emergencies, and when instructed to do so.

11. Refrain from eating or drinking on the bus.

12. Avoid the use or possession of tobacco, matches, cigarette lighters, obscene materials, weapons, drugs or other prohibited items on the bus.

13. Take no glass objects or other objects on the bus if prohibited by state, federal law or local school board policies.

14. Take no band instruments, projects and other objects too large or too hazardous to be held by the passenger or stowed safely under the seat. They will not be permitted on the bus.

15. Refrain from damaging the bus in any way.

16. Be courteous, and safety-conscious. Protect your personal riding privilege, and enjoy the ride.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:628 (April 1999).

Chapter 7. Selection and Continued Employment: Full-Time, Substitute and Activity Bus Drivers and Special Education Bus Attendants

§701. Important Factors

A. The most important factors in student transportation is the school bus driver and the bus attendant. They must be in good physical condition, of sound moral character and skilled in the performance of their duties. They must be able to develop good relations with students, parents and supervisory personnel, able to adjust to varying job conditions and must possess positive attitudes toward safety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:628 (April 1999).

§703. Employment Requirements

A. Any parish or city school system employee who is required to transport or assist in the transportation of students to and from school or school-related activities must meet certain requirements. This applies to full-time school bus drivers, substitute drivers, activity bus drivers and bus attendants. Mechanics, supervisors or other personnel who are licensed to drive school buses but do not actually transport students must fulfill requirements of the Louisiana Commercial Driver's License Program. They may not otherwise be required to fulfill all requirements specified in this section.

B. Employment applications and job descriptions must meet the requirements of the Americans with Disabilities Act and should include as a minimum the following information.

1. Name, address and telephone number of applicant.

2. Education and specialized training.

3. General physical condition.

4. Armed Services record (if applicable).

5. Personal and business references.

6. Record of criminal convictions (R.S. 15:587.1 and R.S. 17:15).

C. Specific job requirements necessitate specialized training for driving personnel and for bus attendants or aides before they are employed and during the entire terms of service in the transportation program. The minimum requirements are listed here; however, local school districts may establish additional criteria for driving personnel and/or bus attendants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:628 (April 1999).

§705. School Bus Drivers

A. The term *school bus drivers* included in this section includes anyone who is certified to transport students to and from school and school-related activities. Full-time drivers, substitute drivers (including bus attendants who may also be certified to drive in emergency situations), activity bus drivers (teachers, coaches, custodians, etc.) and any other employee who at any time transports students must be certified (R.S. 17:491). These requirements are as follows.

- B. Initial Certification
1. Age: 21 years minimum.
 2. Criminal record check (finger printing required).
 3. Driving record check (Louisiana Department of Motor Vehicles).
 4. Commercial Driver's License (CDL).
 - a. Issued by state of *residence*.
 - b. Type C or B (B recommended).
 - c. Passenger endorsement *required*.
 - d. Air brakes authorization (may be required).
 5. Physical examination (CDL physical requirements as a minimum).
 6. Pre-service training—classroom instruction (30 hrs.) to include the following.
 - a. First aid course.
 - b. Defensive driving course.
 - c. Louisiana school bus driver course.
 - d. State/local laws, policies and procedures.
 - e. Transporting passengers with special needs.
 - f. Passenger management/student discipline.
 - g. Other topics authorized in Bulletin 1191, Chapter 9.
 7. Pre-service training—on bus (10 hrs).
 8. Drug/alcohol inservice and screening.

C. Annual Certification

1. Driving record check (Louisiana Department of Motor Vehicles).
2. Current CDL with appropriate endorsements/authorizations.
3. Physical and eye examination.
4. Applicable drug/alcohol testing.

D. Biannual Certification

1. Eight-hour inservice training (may be replaced with four-hour annual inservice training).

NOTE: Additional requirements (e.g., annual inservice training, periodic safety meetings, psychophysical examination, written tests, interviews, annual or biannual personnel evaluations, etc.) may be imposed by local school districts.

2. Certain items included in the previous listing are further explained here. Additional information may be obtained from the Department of Education.

E. Driving Record Check

1. Safe driving records are essential factors in driver selection. Prospective drivers, therefore, must submit documentation as a part of their permanent file attesting to their driving record. *No driver shall be employed if a major chargeable driving offense has occurred in the previous five years.* Specifically, applicants shall be disqualified from consideration as bus drivers if within the past five (5) years, they have been convicted of, or have forfeited a bond on, any charge of: DUI; transportation, possession or use of a Schedule I drug; leaving the scene of an accident involving an injury or fatality; or any felony involving the use of a motor vehicle. In addition, any applicant must come under close scrutiny if the driving or criminal record indicates that a concern should exist for the welfare of children in the applicant's charge.

2. The driving records of all full-time and substitute bus drivers and activity bus drivers must be reviewed by the Supervisor of Transportation annually. Additionally, these

drivers must report moving violations convictions in accordance with Louisiana Commercial Driver's License Statutes.

3. The Department of Public Safety and Corrections, Office of Motor Vehicles, shall provide for the examination of driving records, as provided in R.S. 17:491.1.

F. Physical Condition

1. The Commercial Driver's License physical examination is a minimum requirement. A copy of the examination form must be filed with the school district's Transportation Office before the beginning of each school year. More extensive and/or more frequent examinations may be required by the local district. *All school bus drivers must be certified as having normal use of both hands, both arms, both feet, both legs and must possess normal or corrected vision of 20/40 in both eyes, with a field of vision of at least 150 degrees.* They must have corrected or normal hearing, be free of communicable disease and of mental, emotion or functional disorders.

2. *After a heart attack or other serious illness,* a certificate of health and permission to return to work from a licensed physician must be presented and filed with the Transportation Office and maintained in the driver's record. Local school boards may require such certification, as well as all annual physical examinations, to be approved by board-appointed physicians.

G. Psychophysical Examination

1. Local school districts may include a psychophysical examination in the annual requirements. If administered, the psychophysical examination should include a test of depth perception (not to exceed three inches total in three trials) and a test of reaction time (not to exceed an average of 3/8 seconds in three trials). Individuals who exceed these maximums should be referred to a licensed physician for evaluation. A return to work certificate must be submitted to the transportation supervisor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:628 (April 1999).

§707. Bus Attendants (Aides)

A. Bus attendants must be physically and emotionally able to assist the bus driver in all activities required to safely transport the student with special needs, except for actually driving the bus. (The attendants may also be certified to drive.) This may require the ability to perform some lifting activities, manual dexterity for assisting and securing students with assisting devices, supervising passengers and other essential tasks.

B. Local school districts have more latitude in selection criteria for bus attendants than for bus drivers. Nevertheless, annual physical examinations are recommended because of the nature of tasks to be performed. Additionally, preservice and biannual (or more frequent) inservice training should be mandated to cover student exceptionalities, management of the special needs passenger, first aid, loading and unloading techniques, emergency evacuation of the special needs bus and related topics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:629 (April 1999).

§709. Termination of Services or Removal of Certification

A. *Full-time bus drivers* who have served the *mandatory three-year probationary period* and have acquired tenure may be terminated for cause, but only in accordance with the terms of R.S. 17: 493. Reasons for dismissal include willful neglect of duty; incompetence; immorality; intoxication while on duty; physical inability to perform duties; failure to keep the school bus in a safe, comfortable and practical operating condition; being a member of or contributing to any group, organization, movement or corporation that is prohibited by law or enjoined from operating in the State of Louisiana.

1. Additionally, the abolition, discontinuance or consolidation of bus routes may require a reduction in force, or lay-off of one or more bus drivers. The procedure prescribed in R.S. 17:493 must be followed.

B. The requirements for termination of services for non-tenured driving personnel and for bus attendants is less structured, but due process requirements and local policies and procedures must be followed. It is possible, also, that an activity bus driver may be denied driver certification without the employee's primary employment (e.g., teacher, custodian, etc.) being terminated. That would be a local decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:630 (April 1999).

Chapter 9. Instructional Program for School Bus Drivers

§901. Driver Training Program

A. The application of federal and state minimum safety standards for school buses has greatly improved the safety of school children riding school buses within the state. Recent improvements in driver selection and training procedures resulted in employing safety-minded drivers. Emphasis in driver training programs has reduced the school bus accident rate in which the school bus driver is at fault. These high standards must be continued. The driver training program must continue to offer a means of educating drivers in safe, economical and efficient school transportation operations.

B. Local school systems, as well as the State Department of Education, must accept the responsibility for designing and implementing training programs that will continue to develop the driver's potential for safe, accident-free driving.

C. Instructional programs for school bus drivers are designed to prepare each driver for the unusually difficult task of safely transporting school children to and from school and school-related activities. Local school districts are authorized to design specific course content for two distinct categories of drivers: (1) full-time and substitute bus drivers who transport students on daily routes to and from school and (2) activity bus drivers who transport students occasionally to and from school-related activities (athletic events, parades, field trips, etc.).

D. If separate classes are scheduled, course content should be suited to specific needs of trainees. Example—Activity bus drivers need more training in planning and driving trips out of town and less training in transporting students on daily routes. Full-time and substitute drivers need more training in student

management and discipline procedures than do teachers who are training to be activity bus drivers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:630 (April 1999).

§903. Two Types of Driver Training Make up the School Bus Driver Instructional Program

A. Preservice Training—which is designed to develop minimum skills in driver applicants.

B. Inservice Training—which is designed to improve skills, attitudes and knowledge of all who drive school buses in the State.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:630 (April 1999).

§905. Preservice Training (Approximately 40 Hours)

A. In order to ensure safe operation from the onset, all driver trainees must complete the preservice phase of the school bus driver training program. Recent experience in driving a school bus may be considered when scheduling applicants for preservice training. *Also, trainees may be credited with previously completed courses or with job-related experience at the discretion of the local supervisor of transportation.*

B. Instructors for this training may be transportation supervisors, driver training instructors, specifically appointed, experienced school bus drivers who are also skilled in instructional methods or other approved instructional resource persons. State Department of Education personnel may be called on to assist in the classroom phase of preservice training.

C. Preservice instruction will consist of the following three phases: classroom instruction, vehicle familiarization and operation (behind-the-wheel), and on-the-road training. *Unless exempt by the local supervisor of transportation because of job-related experience and/or training, every driver trainee must complete at least 40 hours of instruction before being allowed to operate a school bus loaded with children. Examples of exemptions are segments of curriculum regarding student management and discipline procedures for certified teachers, first aid for first aid teachers, vehicle maintenance for school bus mechanics, transporting students with disabilities and daily loading/unloading procedures for activity bus drivers, etc.* (Drivers who become certified within a year after preservice training do not have to complete additional inservice training that same school year unless so required by local school systems.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:630 (April 1999).

§907. Preservice Instruction

A. Classroom Instruction (30 Hours Total)

1. Unless exemptions are authorized in accordance with preceding paragraphs, preservice classroom instruction must include instruction in the following courses.

- a. Louisiana First Aid Course (Any approved first aid course) 4-8 hours

- b. Drug/Alcohol Awareness Policy and Testing Procedures 2 hours
- c. National Safety Council Bus Driver Defensive Driving Course, ("Coaching the School Bus Driver") 6-8 hours
- d. Appropriate units of Louisiana Department of Education School Bus Driver Instructional Program 6-8 hours
- e. Assertive Discipline/Passenger Management 1-2 hours
- f. Transporting Students with Disabilities 1-2 hours
- g. Applicable federal and state laws and regulations, local ordinances, state and local policies governing school bus transportation 2-4 hours
- h. State and local reporting procedures 2 hours

2. Additional classroom instruction may include the following topics.

- a. Drug Abuse Prevention Awareness.
- b. Recognizing and Reporting Child Abuse.
- c. Preventive Maintenance.
- d. Commercial Driver's License (CDL) Pre-Test Training.
- e. Special activity trip requirements.
- f. Other topics approved by the State Department of Education.

3. Minimum total classroom instruction 30 hours

B. Vehicle familiarization and operation training (Minimum 4 Hours).

1. This instruction must be conducted in the type of vehicle(s) the applicant will drive and should cover at least the following operational topics.

- a. Pre-trip, enroute and post-trip inspection procedures.
- b. Starting, stopping and turning procedures.
- c. Proper use of school bus signals.
- d. Proper backing procedures.
- e. Loading and unloading passengers.
- f. Emergency procedures, including emergency evacuation.
- g. Procedure at railroad crossings.
- h. Student safety instruction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:630 (April 1999).

§909. On-the-Bus Training (Minimum 10 Hours)

A. This phase of the training cycle is designed to introduce the driver to the actual school bus driving task. Supervised on-the-bus training should include, but need not be limited to, the following, unless the trainee has previous school bus driving experience.

- 1. Observe regular driver 2 hours
- 2. Drive empty bus 2 hours
- 3. Drive loaded bus 6 hours

B. Additional training on-the-bus may be required as determined by the supervisor of transportation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:631 (April 1999).

§911. Inservice Training (Minimum 8 Hours Within a Two-Year Period)

A. Inservice training, which is designed to improve the driver's skills, attitude and knowledge, is a vital part of the total school bus safety effort. Training helps to ensure that drivers are kept up-to-date on any changes in laws, rules, regulations and policies, as well as to provide a ready refresher of materials covered in preservice training. As a minimum, at least eight (8) hours of inservice training must be provided to all drivers within a two year period; however, annual inservice training is encouraged. (The required eight hours may be divided into two (2) annual four-hour blocks, if so desired by the local transportation supervisor.)

B. Bus driver participation in inservice training sessions is mandatory for the driver to maintain certification. Training topics should be selected from the following courses on the basis of local school system needs.

- 1. Appropriate units of the Louisiana Department of Education School Bus Driver Instructional Program.
- 2. National Safety Council Defensive Driving Course: "Coaching the School Bus Driver."
- 3. Approved first aid course with emphasis on activities designed to meet school bus drivers' needs.
- 4. Assertive discipline/passenger management training.
- 5. Drug abuse prevention awareness training.
- 6. Transporting students with disabilities.
- 7. Recognizing and reporting child abuse.
- 8. Commercial Driver's License (CDL) training.
- 9. Special activity trip requirements.
- 10. Other topics approved by the State Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:631 (April 1999).

§913. Remedial Training

A. In addition to pre-service and inservice training, supervisory personnel should be aware that school bus drivers may require remedial training if their performance does not meet standards set by state and local policy. Remedial training should be designed to improve specific areas of performance.

B. The following examples reflect a need for remedial training:

- 1. involvement in preventable accidents;
- 2. a record of traffic violations;
- 3. inability to solve student behavior problems;
- 4. vehicle abuse;
- 5. discourteous behavior;
- 6. unreasonable schedule delays;
- 7. inappropriate driver attitude or performance;
- 8. changes in physical fitness;
- 9. failure to comply with state and local policies and procedures.

C. Additional training by local school systems in all phases of student transportation operations is encouraged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:631 (April 1999).

Chapter 11. Vehicle Operation

§1101. Vehicle Operation

A. Student transportation is a service to the student, the school and the community. This service must be measured in terms of service provided in relation to environmental, social, legal and other factors that affect safety, dependability and cost.

B. Bulletin 1475, Operational and Vehicle Maintenance Procedures, approved by the Louisiana Board of Elementary and Secondary Education and published by the Louisiana Department of Education, enumerates various operational procedures for Louisiana school bus drivers.

C. All supervisory and support personnel should review and familiarize themselves with the information contained in Bulletin 1475 to help ensure safe and comfortable rides for the students of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:632 (April 1999).

Chapter 13. Maintenance and Inspection

§1301. Maintenance

A. Proper maintenance of school vehicles is vital for a safe, efficient and economical transportation program. Each local system shall adhere to the following procedures.

1. All school vehicles must be maintained in safe operating condition through a systematic preventive maintenance program.

2. All school vehicles *must be inspected* during the months of *June, July, or August* and certified as safe by the appropriate authority prior to the beginning of each school session.

3. All school vehicles must be *inspected by* an approved Louisiana Commercial Motor Vehicle Inspection Station during *December, January or February* of each school year.

4. Accurate maintenance records must be kept for each school vehicle.

5. School vehicle drivers must conduct pre-trip inspections before beginning each trip, whether morning, mid-day or afternoon. Inspection must include *all items listed in Bulletin 1475 and the Louisiana Drivers Manual for Commercial Vehicle Driver Licensing (CDL)*.

6. Any defects or deficiencies in the areas listed above that may affect the safety of the vehicle's operation or result in its mechanical breakdowns must be reported verbally and in writing to the proper authorities (and approval must be granted by the proper authorities to continue operation of the vehicle).

7. A written report shall be made at the completion of each trip or tour of duty regarding any defect, deficiency, malfunction or questionable performance of a school vehicle.

8. Post-trip inspections must be conducted after each trip or individual run to check for passengers, equipment, medication, etc. that may have been left on the bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:632 (April 1999).

Chapter 15. Pupil Instruction

§1501. Safe Riding Practices

A. Because of the increased number of pupils being transported and the ever increasing number of accidents on the highways, there is a need to instruct pupils on safe riding practices and on proper evacuation of a school bus in case of an emergency.

B. *Twice during the school session*, intensive classroom instruction must be given on safe riding practices. This instruction must be presented once during the first six (6) weeks of each semester and should be coordinated to involve bus drivers, bus attendants, teachers and principals. Once the instruction has been completed, the principal must complete a *Form T-7*, certifying that the instruction has been performed and shall submit it to the local transportation supervisor. Instruction must include the following.

1. Student behavior.
2. Identifying individuals who have authority over passengers.
3. Loading and unloading procedures.
4. Seat assignments.
5. Acceptable conduct on the bus, e.g. talking, moving around and use of windows.
6. Keeping the bus clean.
7. Care of the bus and its equipment.
8. Emergency procedures, including evacuation drills.
9. Meeting the bus, waiting for the bus, leaving the area after unloading.
10. All other applicable local and state rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:632 (April 1999).

§1503. Emergency Exit Drills

A. In an emergency it is possible for pupils to jam the emergency door by all trying to get out of the door at the same time. In order to help avoid a situation of this type, schools should organize and conduct emergency exit drills for all pupils who may ride a school bus. (See Chapter 33.)

B. One emergency exit drill must be held during the first six (6) weeks of each school semester. The following guidelines are given for conducting the emergency exit drills.

1. Have a local written policy covering the drills.
2. School officials should schedule drills with drivers.
3. Practice drills on school grounds, during school hours, in a safe place, and under supervision of school officials.
4. Allow for individual differences in jumping out of the emergency door. Instruct helpers to offer a helping hand palm up and avoid grasping a child's hand or arm. Children will hold on if they want help.
5. Time each drill.
6. Practice exiting the bus through the service (front) door and the emergency rear and/or side door. Instruct students on use of other available emergency exits.
7. Ensure that the principal completes *Form T-8* and forwards it to local transportation supervisor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:632 (April 1999).

Chapter 17. Evaluation of the Pupil Transportation System

§1701. Criteria

A. Each school system should have a plan for annually evaluating its pupil transportation operation. There are several criteria which can be applied to obtain some estimates of the operation's effectiveness. These criteria relate to such factors as safety, efficiency and economy.

B. Safety criteria include, but may not be limited to.

1. Injuries to pupils, the driver and other highway users.
2. Frequency and severity of property damage accidents in which buses are involved.
3. Frequency and severity of moving traffic violations for which drivers are cited.
4. Frequency and nature of complaints from parents, the motoring public, school administrators and pupils.
5. Frequency and nature of vehicle breakdowns, road failures and other emergency situations involving buses.
6. Hazardous situations on bus routes.

C. Efficiency and economy criteria include, but may not be limited to.

1. Bus route operation within the framework of established school hours.
2. Minimizing the actual time pupils are on the bus.
3. Routes designed to achieve maximum utilization (i.e., full capacity within reason), and elimination of unnecessary mileage and duplication.
4. Annual review of all routes and routing procedures, including stop-times.

D. Adequate planning is essential to the completion of a comprehensive evaluation of a transportation program. The planning procedures should include the establishment of essential short and long-range goals, with provisions for periodic evaluation of progress along predetermined time schedules and a point-by-point comparison of the system's present program with state policies and standards to identify deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:633 (April 1999).

Chapter 19. Records and Reports

§1901. Records

A. Files on all school bus drivers, including substitutes and activity drivers, must be maintained in the local system's central office. The following documents must be included in these records.

1. Vehicle data.
2. Driver data.
3. Vehicle accident/incident records.
4. Vehicle inspection and maintenance records.
5. Complaints.
6. Liability insurance policy verification for contract drivers.
7. Documentation of completion of bus driver's training courses (preservice and inservice).

8. Medical examination reports.

B. A map and/or a description of each driver's routes (current and of adequate quality) must be kept in the local system's central office. Maps must indicate the following.

1. Location of driver's home or point of departure.
2. Beginning point, individual stops and final destinations of each route or daily trip or daily runs.
3. School or schools being served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:633 (April 1999).

§1903. Reports

A. Statistical data and reports on all bus-related accidents must be maintained by the local transportation supervisor. A written report of each accident may be made upon request by the Louisiana State Department of Education. (See Bulletin 1475, Chapter 29).

B. Cost and expenditure data for pupil transportation facilities, equipment, and staff must be maintained at the local level and provided to the State Department of Education upon request.

C. Accurate maintenance records must be kept for all buses, including those of contract drivers.

D. When a school bus collision occurs and there is one or more fatalities, or if occupants are in such critical condition that one or more fatalities seem imminent, notification should be made by the investigating police agency by telephone to the National Response Center in Washington, D.C., 1-800-424-8802 or 8803 or to Ron Engle, National Highway and Traffic Safety Administration (NHTSA 202-366-2717).

1. NHTSA may dispatch personnel to investigate accidents. It is essential that prompt notification occur to provide the investigators with an opportunity to cover each accident site before perishable information has been destroyed and while vehicles are still available for inspection by automotive specialists and other accident reconstruction specialists.

2. Police agencies having jurisdiction are not expected to hold the scene of these accidents for a Federal investigation team. The team will not interfere with or supersede the agency having original jurisdiction. It is desired that this will be a cooperative effort.

3. Bus drivers may be required to file Form SR-10 with Louisiana Department of Motor Vehicles after an accident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:633 (April 1999).

Chapter 21. School Bus Routes

§2101. Routes

A. The term *route* shall apply to the combined total daily trips (or runs) regularly assigned to the bus driver. The statutory authority governing the establishment and continuation of school bus routes in Louisiana is R.S. 17:158 and R.S. 17:497. The State Board of Elementary and Secondary Education (BESE) has been granted the authority under the provisions of R.S. 17:164 to establish and adopt regulations relating to the operation of school buses in the transportation of students to and from school.

B. The State Board (BESE) also adopts overall regulations relative to pupil transportation programs. The following policies were adopted by BESE to provide guidelines in setting up and continuing school bus routes in the state.

C. The primary responsibility for establishing and continuing school bus routes rests with the local school board. Local school boards are responsible for maintaining safe, efficient, economical school transportation programs by establishing and continuing only those routes that are needed to assure timely arrivals and departures within the framework of established school hours; by designing routes to achieve maximum utilization of buses and the elimination of unnecessary and duplicated mileage; and by consolidating and eliminating bus routes when no longer needed. The establishment of new routes and the continuation of existing routes shall be governed by §2103.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:633 (April 1999).

§2103. Accurate Measurement of Bus Routes

A. Routes begin at the farthest point from the school or schools served and proceed on the shortest charted course. Exceptions exist when local school officials determine it is more economical to do otherwise and/or when there are hazardous conditions.

B. Bus routes are measured in terms of "one-way mileage." Paid one-way mileage for contract drivers begins when the first child is picked up and ends when the final destination or school is reached.

C. When one-way mileage differs in the afternoon from that of the morning route, the one-way mileage for the morning and afternoon is totaled and divided by two. The result is the average one-way mileage for that particular route.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:634 (April 1999).

§2105. Funding For School Transportation Services

A. The State Department of Education and the Board of Elementary and Secondary Education shall develop procedures and forms for local school districts to report transportation data and for receiving state funding for transportation. Local school districts may be required to provide any or all of the following information to the Department of Education.

1. An annual report of publicly and privately owned buses, including names of drivers, vehicle data, number of daily trips, number of students, number of daily miles, costs. Reporting forms or formats for electronic transmission of data will be provided by the Department of Education.

2. Record of contract owners who are covered by applicable frozen mileage statutes. (See Number 3 below.)

3. Frozen mileage (R.S. 17:497) is the mileage recorded on Form T-10 to indicate the route mileage approved by the Supervisor of Transportation *at the time the school bus is placed into service*. Frozen mileage guarantees that the contract owner/operator cannot be penalized by a reduction of

compensated mileage (except as may be requested by the owner/operator) for a period of seven (7) years when a new bus is purchased or five (5) years when a used bus *not more than five (5) model year old* is purchased. If route mileage is increased, operational mileage compensation must be increased accordingly, if route mileage is decreased because of circumstances beyond the control of the owner/operator, operational mileage compensation shall not be reduced below the mileage level indicated on Form T-10. Every effort should be made by the Supervisor of Transportation to assure that route mileage is not reduced below the frozen mileage level. If a driver requests and is granted less mileage than the frozen mileage, actual mileage shall be compensated. Frozen mileage applies only when the owner/operator makes a purchase of a new or used bus not more than five years old. *The transfer of a bus from spouse to spouse, acquisition as a gift, etc., other than a purchase does not afford frozen mileage to the person who acquires the bus.*

4. Selling of school buses (Form T-10) is used by the seller (i.e., chassis and by body dealers, individuals, etc.) To furnish a record of all buses bought and sold to public school bus drivers and/or school boards. The sellers, by signing this form, certifies that the bus meets all Federal Motor Vehicles Safety Standards (FMVSS), and the requirements of State Department of Education Bulletin 1213, *Minimum Standards For School Buses in Louisiana*. All information requested on the form must be carefully provided.

5. The seller and the purchaser should agree on such items as chassis and body condition, etc. The transportation supervisor shall record approved one-way mileage on Form T-10. *The completion of this form is mandatory*. Forms shall be submitted in a timely manner and should be forwarded to the Department of Education upon request. (T-10 Forms are available, upon request, from the Department of Education.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:634 (April 1999).

Chapter 23. Board Policies

§2301. Eligible Students

A. In accordance with Louisiana Revised Statute 17:158, each parish and city school board shall provide free transportation for any student who attends a school of suitable grade approved by the State Board of Elementary and Secondary Education if the student resides more than one mile from such school, and the school is within the jurisdictional boundaries of the parish or city school board.

B. For the purpose of administration, the distance shall be determined as extending from the student's driveway or entrance to the nearest public road, to the walking entrance of the school building. (The distance shall be measured by the most direct route and may be along roads and walkways.)

C. No person other than assigned students and authorized persons approved by the local Transportation Supervisor or other authorized school officials are allowed to board the bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:634 (April 1999).

§2303. Transportation of Students Living Within One Mile of School of Attendance

A. The State Board of Elementary and Secondary Education allows the local system to transport students living within one-mile of the school they attend if there are "exceptional" or hazardous walking situations. The transportation of these students requires special permission from the State Board. Approval of requests for the transportation of students living less than one mile from the school they attend will not be approved unless the request for such approval is accompanied by a plan or procedure to eliminate the exceptional conditions (if possible) by providing safe walking areas or conditions.

B. The plan must identify the problem, list proposed solutions, outline procedures to correct the problem, and include the time schedule for completion. When an emergency exists the State Superintendent of Education can authorize transportation, not to exceed 30 days. The conditions must be reviewed for continued approval. All exceptional conditions shall be reviewed by June 30 of each school year by the local school system to determine whether corrective actions can be made in order to relieve the need for this transportation. (Act 6 of the 1986 Special Legislative Session amended R.S. 17:158 (A) and thus allows 15 local school systems to transport within one mile if hazardous conditions exist, but at no cost to the state.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:635 (April 1999).

Chapter 25. Special Education Transportation

§2501. Responsibility of the Louisiana Legislature

A. Provide appropriate funds for the implementation of all mandated transportation programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:635 (April 1999).

§2503. Responsibility of the State Department of Education

A. Seek funding from the Louisiana Legislature to provide compensation to the local educational agencies for specially equipped school buses and bus attendants (aides).

B. Seek the necessary funds from the Louisiana Legislature to fully fund all transportation for students with special needs.

C. Seek funds from the Louisiana Legislature to employ the necessary personnel to develop and provide pre-service and inservice training programs for bus operators and attendants who transport students with special needs.

D. Provide current information to local school districts regarding changes in State and Federal laws, policies and procedures that affect student transportation services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:635 (April 1999).

§2505. Responsibility of Local Board or Agency

A. Assure that the students being transported spend only a reasonable amount of time on the bus. (The locations of the

domicile and the school facility will be the determinate factors in the amount of travel time.)

B. Assure that supervision of students at transfer points (if applicable) will be in compliance with local educational agency policy.

C. Employ adult (i.e., 18 years of age or older with approved training as required by local board policy) attendant(s) as needed on all school buses transporting students with disabilities and for students with special needs.

D. Assure that all school buses used to transport students with special needs comply with current Louisiana State Department of Education Bulletin 1213, *Minimum Standards for School Buses in Louisiana*.

E. Assure that appropriate safety measures are used in the transportation of students with special needs. Such safety measures shall include the designation of roads, bus area, and any special bus stop location(s).

F. Assure that specialized equipment used to transport students to and from educational sites comply with all Federal Motor Vehicle Safety Standards, where such standards are applicable.

G. Develop, implement and post evacuation procedures for each school bus in accordance with requirements.

H. Suspend or terminate student transportation services upon the submission of appropriate documentation for the following reasons, with parents having the right to initiate due process proceedings.

1. When parents(s) or appointed designee does not assume responsibilities as outlined in §2509.

2. When the child's unacceptable behavior is related to the child's disability, and a mutually agreed upon alternative method of transportation will be implemented.

3. When the child's unacceptable behavior is not related to the disability, and the local disciplinary policies and procedures provide for suspension or termination of school bus transportation.

I. The local school superintendent (or designee) shall make a reasonable and timely effort to provide notification when it is known that there will be an interruption in bus service or a change in the bus schedule.

J. Provide to each school bus driver confidential emergency information for each student to include at least the following information.

1. Student's name and address.

2. Nature of student's disability.

3. Emergency health care information.

4. Name and telephone number of student's physician, parent, guardian and/or custodians who can be contacted in case of an emergency.

5. Provisions for student's welfare when and if the student is unable to be met at the designated bus stop (i.e. additional drop off location(s)).

6. A small photograph of the student if available.

7. Any other information deemed necessary by the local agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:635 (April 1999).

§2507. Responsibility of the Bus Operator and Attendant

A. Assure that students with special needs are supervised on board at all times.

B. Ensure that the protective safety devices are in use and fastened properly. (In instances where an attendant is not available, this shall be the responsibility of the bus operator.)

C. Assist students on and off the bus at the designated bus stop when it is necessary for their safe entrance and exit from the bus. Conduct post-trip inspection of the bus, checking especially for passengers, special equipment, medications, etc. that may have been left on board the bus.

D. Maintain on his/her vehicle confidential emergency information for each student.

E. The bus operator shall deliver the students to the same bus stop from which they were picked up. Special circumstances may allow a change in this procedure, but it must be approved by the local superintendent (or designee).

F. The attendant must be on the school bus at all times during the bus route if required by the I.E.P. Exceptions are to be made only by the local supervisor of transportation.

G. The bus operator will be responsible for providing the parent with appropriate emergency phone numbers to contact the driver.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:636 (April 1999).

§2509. Responsibility of the Parents or Appointed Designee

A. Provide the local educational agency with pertinent written information regarding any special care the student may need while on the bus.

B. Have the child at the designated bus stop at the regularly scheduled time and provide the necessary supervision until the bus arrives.

C. Secure the child into any specialized carrying equipment or assistive device prior to the arrival of the bus.

D. Meet the bus upon its return to the designated bus stop at the scheduled time, if specified in the I.E.P., or make appropriate provisions for the student's welfare when and if the student is unable to be met at the designated bus stop.

E. Take the child home in the afternoon if the parent takes or sends his/her child to school, unless otherwise provided for by local school board policy.

F. Make a reasonable and timely effort to notify the bus operator prior to the beginning of the morning run if the child is unable to attend school.

G. Keep the bus loading area free of debris and other obstacles.

H. Any parent of a student with special needs who believes that the transportation services provided for that student are not in compliance with these regulations may utilize the due process procedure as established in the Special Education regulations in accordance with R.S. 17:1941 et seq. (See Bulletin 1886.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:636 (April 1999).

§2511. Transportation of Students with Special Needs who Cannot be Transported by a Regularly Equipped School Bus

A. Parish and city school systems should meet the following requirements in providing transportation for students who cannot be transported by regularly equipped school buses or the regular, established transportation system.

1. Transportation routes will be established by the local school system. These routes must be well planned to ensure economy and efficiency. All existing transportation requirements of the local school system must be considered prior to establishing an additional route.

2. The special education program or class to which students will be transported must meet the requirements of R.S. 17:1941 et seq.

3. Drivers of vehicles on the special routes will neither be subject to provisions of R.S. 17:496 (minimum salary schedule) nor will they be eligible for tenure.

4. Vehicles used on these special routes (private cars, station wagons, vans, etc.) will be subject to safety inspections and carry the necessary insurance coverage required by the local school system.

5. Local school systems will reimburse drivers of vehicles (private cars, station wagons, vans, etc.) approved by the local school system for such purposes at the current state approved rate for reimbursement of mileage on the basis of miles traveled for one round trip per vehicle for each day of attendance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:636 (April 1999).

§2513. Transportation of Residential (Boarding) Students

A. The local school system, as specified in R.S. 17:1941, et seq., has the responsibility of providing special education services to certain children residing within their geographic areas of responsibility. In providing these services the first priority should be to use the facilities and personnel of the local school system, itself.

B. If this is not possible, a request should be made for the child to attend the nearest school in Louisiana, approved by the Special Education Division of the Louisiana State Department of Education, where the child can obtain the required services. If it is not possible to obtain the required services in Louisiana, a request may be made for the child to attend the nearest out-of-state school approved by the Special Education Division of the Louisiana Department of Education.

C. Parish and city school systems must meet the following requirements for transportation of special needs students who cannot be transported on bus routes which are subject to provisions of R.S. 17:495 (School Bus Drivers' Salary Schedule).

1. The special education program or class to which students will be transported must meet the provisions of R.S. 17:1941 et seq. and Regulations for Implementation of R.S. 17:1941 et seq.

2. Drivers of vehicles on these routes shall not be subject to provisions of R.S. 17:495 nor will they be eligible for tenure.

3. Vehicles used on these special routes (private cars, station wagons, vans, etc.) shall be subject to safety inspections and shall carry the necessary insurance coverage as determined by the local school systems.

4. Funds for such transportation services may be used by school systems for transportation to the nearest facility approved by the Louisiana Department of Education only if the local school system is unable to provide the services required by the student with special needs. This need should also be verified by the student's Individual Educational Plan (I.E.P.).

5. Payment for such transportation services shall be made by the local school system at the current state approved rate for the reimbursement of mileage for transportation within the state for a maximum of nine (9) round trips per school year.

6. Payment for such transportation shall be made by the local school system at the current state approved rate for the reimbursement of mileage for transportation out-of-state for two (2) round trips per year providing there is no program within the state that can adequately provide for the special needs of the student.

D. Bulletin 1886, *Special Education Transportation Guide*, provides a detailed description of special education transportation services and guidelines governing such services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:636 (April 1999).

Chapter 27. Reference Sources for Specific Topics

§2701. Topics

A. The topics listed herein after are *not* intended to be all-inclusive, covering every facet of student transportation services in Louisiana. The list is intended to provide Louisiana sources of reference for information regarding some of the topics most frequently questioned and discussed. It is recommended that every school bus driver consult with the local Supervisor of Transportation if additional information or further clarification is required.

B. Louisiana Department of Education Bulletins referenced below are as follows: Bulletin 1191: *School Transportation Handbook* (rev. 1998), Bulletin 1213: *Minimum Standards for School Buses in Louisiana* (rev. 1998), Bulletin 1475: *The Louisiana School Bus Driver Operational and Vehicle Maintenance Procedures* (rev. 1998), and Bulletin 1886: *Special Education Transportation Guide* (rev. 1998).

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:637 (April 1999).

§2703. References

A. Eligible (for School Bus Transportation) Students

1. One mile or more from school
 - a. R.S. 17:158
 - b. R.S. 17:2003
 - c. R.S. 17:3381
 - d. Bulletin 1191, Chapter 23
 - e. Bulletin 1886, Section II

2. Less than one mile from school
 - a. R.S. 17:158
 - b. Bulletin 1191, Chapter 23
3. Post-secondary vocational technical facilities
 - a. R.S. 17:2003
4. College students
 - a. R.S. 17:3381

B. Emergency Procedures

1. R.S. 9:2793
2. R.S. 32:398
3. R.S. 37:1732 ("Good Samaritan Law")
4. Bulletin 1191, Chapters 15 and 33
5. Bulletin 1475, Chapters 11 and 27
6. Bulletin 1886, Sections II, III
7. Louisiana CDL Manual, pp. 2.13-2.16

C. First Aid Procedures

1. Bulletin 1475, Chapter 19
2. Bulletin 1886, Section V

D. Guaranteed ("Frozen") Mileage

1. R.S. 17:497
2. Bulletin 1191, Chapter 21

E. Habitual Offender Defined

1. R.S. 32:1472

F. Insurance Against Injury to Students Transported to School

1. R.S. 17:159
2. R.S. 17:159.1
3. R.S. 17:159.2
4. R.S. 32:601
5. R.S. 32:604

G. Minimum Insurance Coverage

1. R.S. 45:162 (17)(18)

H. Passenger Management/Discipline

1. R.S. 14:95.2 (Illegal Weapons)
2. R.S. 17:223
3. R.S. 17:240 (Smoking)
4. R.S. 17:416
5. Bulletin 1191, Chapters 5, 9 and 15
6. Bulletin 1475, Chapters 13 and 17
7. Bulletin 1886, Sections II, IV
8. Louisiana CDL Manual, pp. 4.2-4.3

I. Public Intimidation (of School Bus Drivers)

1. R.S. 14:122

J. Roles and Responsibilities

1. Overview
 - a. R.S. 17:24 (State Department of Education)
 - b. R.S. 17:41 (Attorney General and State Superintendent of Education)
 - c. Bulletin 1191, Chapters 3, 5 and 25
 - d. Bulletin 1475, Chapter 3
 - e. Bulletin 1886, Section I
2. Parish and City School Boards
 - a. R.S. 17:51
 - b. R.S. 17:81
 - c. R.S. 17:104
 - d. R.S. 17:105
 - e. R.S. 17:111
 - f. R.S. 17:491 (Payment for Physical Examinations)
 - g. R.S. 23:897 (Payment for Physical Examinations)

- h. Bulletin 1191, Chapter 5
- i. Bulletin 1475, Chapter 15
- 3. Bus Drivers
 - a. R.S. 17:168 (Extra Duties)
 - b. R.S. 17:491 (Definition of "School Bus Operator")
 - c. R.S. 32:52
 - d. R.S. 32:53
 - e. R.S. 32:58
 - f. R.S. 32:80
 - g. R.S. 32:171 (Railroad Crossing)
 - h. R.S. 32:173 (Railroad Crossing)
 - i. R.S. 32:281 (Backing the School Bus)
 - j. R.S. 32:282
 - k. R.S. 32:328
 - l. R.S. 32:398
 - m. R.S. 32:402
 - n. R.S. 32:404
 - o. R.S. 32:1301
 - p. Bulletin 1191, Chapters 5 and 13
 - q. Bulletin 1475 (All)
 - r. Louisiana CDL Manual, Sections 1-4 and 5 (if appropriate)
- 4. Special Needs Drivers and Bus Attendants (Aides)
 - a. Bulletin 1191, Chapter 25
 - b. Bulletin 1886 (All)
- K. Rules and Regulations: Requirements and Authority
 - 1. R.S. 17:164
 - 2. R.S. 17:165
 - 3. R.S. 17:166
 - 4. R.S. 17:494
- L. School Bus Drivers
 - 1. Compensation
 - a. R.S. 17:495
 - b. R.S. 17:496
 - c. R.S. 17:496.1
 - d. R.S. 17:497
 - e. R.S. 17:497.1
 - f. R.S. 17:497.2
 - g. R.S. 17:498
 - h. R.S. 17:499
 - i. R.S. 17:500.1
 - j. R.S. 17:500.2
 - 2. Driver Selection Requirements
 - a. R.S. 15:587.1 (See also RS 17:578)
 - b. R.S. 17:15
 - c. R.S. 17:491
 - d. R.S. 17:491.1
 - e. R.S. 17:493.1
 - f. R.S. 17:691
 - g. R.S. 32:52
 - h. R.S. 32:402
 - i. R.S. 32:408
 - j. R.S. 32:417
 - k. Bulletin 1191, Chapter 7
 - l. Bulletin 1475, Chapter 5
 - 3. Probation/Tenure for Bus Drivers
 - a. R.S. 17:432
 - 4. Removal from Duty
 - a. R.S. 17:493
- 5. Sick Leave
 - a. R.S. 17:500
 - b. R.S. 17:500.1
 - c. R.S. 17:500.2
- M. School Bus Routes
 - 1. Definition
 - a. Bulletin 1191, Chapter 21
 - b. Bulletin 1475, Chapter 15
 - 2. Design/Measurement/Assignment
 - a. R.S. 17:493.1
 - b. R.S. 17:1747(E)
 - c. Bulletin 1191, Chapter 21 and 31
 - d. Bulletin 1475, Chapter 15
 - e. Bulletin 1886, Section II, Appendix C
 - 3. Discontinuance for Economically Justifiable Reasons
 - a. R.S. 17:158
 - b. R.S. 17:492
 - 4. Filling Vacancies
 - a. R.S. 17:493.1
 - b. R.S. 17:493.1(D)
 - c. R.S. 17:500
- N. School Buses
 - 1. Capacities
 - a. R.S. 17:158.4
 - b. R.S. 17:32:293 ("Standee Law")
 - c. Bulletin 1213, Chapter 5
 - d. Bulletin 1475, Chapter 9
 - 2. Definition/Types
 - a. Bulletin 1213, Chapter 5
 - b. Bulletin 1475, Chapter 29
 - 3. Inspection
 - a. R.S. 32:53
 - b. R.S. 32:1301
 - c. R.S. 32:1302
 - d. Bulletin 1191, Chapters 5 and 13
 - e. Bulletin 1475, Chapters 7 and 25
 - f. Louisiana CDL Manual, pp. 2.1-2.12, 4.1-4.2, 4.5
 - 4. Maximum Speed Limits
 - a. R.S. 32:62
 - b. Bulletin 1475, Chapter 9
 - 5. Purchases
 - a. R.S. 17:158.1
 - b. R.S. 17:158.2
 - c. R.S. 17:158.3
 - d. R.S. 17:158.4
 - e. R.S. 17:158.5
 - f. R.S. 17:162 (Private Use)
 - g. R.S. 17:163
 - h. R.S. 17:493
 - i. R.S. 17:497
 - j. R.S. 47:301 (Sales Tax Exemption for Certain School Buses)
 - 6. Specifications
 - a. R.S. 17:158.5
 - b. R.S. 17:161 (See RS 17:163)
 - c. R.S. 17:164
 - d. R.S. 17:164.1 (Crossing Control Device)
 - e. R.S. 30:751 (Alternative Fuels Requirement)
 - f. R.S. 30:752 (Alternative Fuels Requirement)

- g. R.S. 32:53
- h. R.S. 32:282
- i. R.S. 32:308
- j. R.S. 32:318
- k. R.S. 32:375
- l. R.S. 32:378(D) (Audible Backing Alarm)
- m. R.S. 32:1301
- n. R.S. 39:362.1 (Alternative Fuels Requirement)
- o. Bulletin 1213 (All)
- p. Federal Guide 17
- q. Federal Motor Vehicle Standards for School Buses
- O. Special Fuels (LPG and CNG) Tax Reduction
 - 1. R.S. 47:802(F)
 - 2. R.S. 47:803
- P. Special Provisions for Special Education Students who Cannot be Transported by School Bus
 - 1. Bulletin 1191, Chapter 25
 - 2. Bulletin 1886, Appendix D
- Q. Toll-Free Ferry and Bridge Passage for Students
 - 1. R.S. 17:157
- R. Training Requirements
 - 1. R.S. 17:497.3
 - 2. Bulletin 1191, Chapter 9
 - 3. Bulletin 1475, Chapter 5
 - 4. Bulletin 1886, Section II
 - 5. Public Law 105-17 (IDEA)
- S. Vehicle License Fees
 - 1. R.S. 47:466
 - 2. R.S. 47:468
- T. Vehicles Meeting and Overtaking School Buses
 - 1. R.S. 32:80

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:637 (April 1999).

Chapter 29. Louisiana Revised Statutes

§2901. Legislature

A. The Louisiana Legislature from time to time enacts laws dealing with school transportation. Every school official (principal, supervisor, superintendent, etc.) should become familiar with the statutes affecting this program. The statutes referenced section represent the minimum knowledge of school transportation laws school officials should possess in carrying out their responsibilities for the safe transportation of school children.

B. This is not a legal document, nor is it intended to serve as a basis for legal interpretation. The statutes contained herein have been referenced only. School officials are urged to seek legal opinions of local school board attorneys, district attorneys throughout the state, State Department of Education Attorneys, and/or the State Attorney General prior to formulating policies affecting the school transportation program.

C. School transportation officials are urged to seek the advice of legal counsel prior to advising school boards with respect to school transportation laws, rules, regulations and policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:639 (April 1999).

§2903. Statutes

- A. Title 9—Civil Code Ancillaries
 - 1. Source: R.S. 9:2793—Gratuitous services at scene of emergency; limitation of liability.
 - 2. Source: R.S. 14:122—Public intimidation (of bus drivers).
- B. Title 14—Criminal Law
 - 1. Source: R.S. 14:95—Illegal carrying of weapons.
- C. Title 15—Criminal Procedure
 - 1. Source: R.S. 15:578—Functions, powers and duties of the bureau, crime laboratory.
 - 2. Source: R.S. 15:587.1—Provision of information to protect children.
- D. Title 17—Education
 - 1. Source: R.S. 17:15—Criminal history review.
 - 2. Source: R.S. 17:24—State Department of Education: Creation Division.
 - 3. Source: R.S. 17:41—Attorney general and state superintendent; Opinion and advise.
 - 4. Source: R.S. 17:51—Parish boards as bodies corporate; Power to sue and be sued; Service of citation.
 - 5. Source: R.S. 17:54—Officer of boards, elections; parish superintendent, qualifications, appointment and removal.
 - 6. Source: R.S. 17:59—General fund of parish school boards.
 - 7. Source: R.S. 17:81—General powers of board.
 - 8. Source: R.S. 17:88—Budget of expected revenues and expenditures; board duty to adopt; submission to state superintendent of education with a copy to the legislative auditor.
 - 9. Source: R.S. 17:104—Authority and responsibility of local boards; factors to be considered.
 - 10. Source: R.S. 17:105—Admission to schools in adjoining parishes.
 - 11. Source: R.S. 17:111—Discrimination in public schools prohibited; pupil assignment; religious education institutions.
 - 12. Source: R.S. 17:157—Ferries and toll bridges, etc.; free passage to school children.
 - 13. Source: R.S. 17:158—School buses for transportation of students; employment of bus operators; alternative means of transportation; improvement of school bus turnarounds.
 - 14. Source: R.S. 17:158.1—Purchase of school buses; athletic departments of high schools.
 - 15. Source: R.S. 17:158.2—Purchase of school buses; resale to bus operators.
 - 16. Source: R.S. 17:158.3—Purchase of school buses; pooling of purchases by school boards.
 - 17. Source: R.S. 17:158.4—Purchase of school buses; ninety passenger capacity.
 - 18. Source: R.S. 17:158.5—Purchase of school buses, specifications required.

19. Source: R.S. 17:159—Insurance against injury to pupils transported to school.
20. Source: R.S. 17:159.1—Insurance on privately owned school buses; withholding amounts to pay premiums; governmental immunity no defense.
21. Source: R.S. 17:159.2—Insurance premiums as obligations of boards; privately owned buses.
22. Source: R.S. 17:161—School buses to be painted national school bus chrome yellow.
23. Source: R.S. 17:162—School buses purchased for private use.
24. Source: R.S. 17:163—Penalties.
25. Source: R.S. 17:164—Regulations relating to construction, design, equipment and operation of school buses.
26. Source: R.S. 17:164.1—Crossing control devices for school buses.
27. Source: R.S. 17:165—Penalty for violation of regulations.
28. Source: R.S. 17:166—Promulgation of rules and regulations.
29. Source: R.S. 17:168—Cities or parishes with 300,000 or more population; extra duties of school bus operators.
30. Source: R.S. 17:223—Discipline of pupils; suspension from school.
31. Source: R.S. 17:225—Minimum attendance required.
32. Source: R.S. 17:240—Smoking prohibited.
33. Source: R.S. 17:416—Discipline of pupils; suspension; expulsion.
34. Source: R.S. 17:428—Supervisors, principals, teachers and other employees prohibited from serving on employing school boards; service on neighboring or other school board.
35. Source: R.S. 17:432—Probation/tenure of school bus drivers.
36. Source: R.S. 17:491—Definitions.
37. Source: R.S. 17: 491.1—Reemployment driving record examination.
38. Source: R.S. 17:492—Probation and tenure of bus operators.
39. Source: R.S. 17:493—Removal of bus operators; procedures; right to appeal.
40. Source: R.S. 17:493.1—Tenured bus drivers; route closest to their homes; vacancies.
41. Source: R.S. 17:493.1(D)—Vacancies: persons willing to acquire bus.
42. Source: R.S. 17:494—Rules and regulations impairing provisions prohibited.
43. Source: R.S. 17:495—Establishment of minimum salary schedules.
44. Source: R.S. 17:496—Minimum salaries.
45. Source: R.S. 17:496.1—Minimum salaries.
46. Source: R.S. 17:497—School bus operational schedules.
47. Source: R.S. 17:497.1—Operation compensation for certain school bus operators.
48. Source: R.S. 17:497.2—Remuneration for inservice training programs.
49. Source: R.S. 17:497.3—In-service training; schedule.
50. Source: R.S. 17:498—Ownership of buses; determination of salary.
51. Source: R.S. 17:499—Insufficiency of appropriation; effect.
52. Source: R.S. 17:500—Sick leave for school bus operators.
53. Source: R.S. 17:500.1—School bus operator; sick leave.
54. Source: R.S. 17:500.2—School bus operators; salary while on leave deductions.
55. Source: R.S. 17:691—Bus driver selection requirements.
56. Source: R.S. 17:1747(E)—Design and measurement of bus routes.
57. Source: R.S. 17:2003—Bus transportation.
58. Source: R.S. 17:3381—Transportation for college students; transportation for other students subject to restrictions; authority to establish and collect bus transportation fees.
- E. Title 23—Mineral and Environment
1. Source: R.S. 23:897—Payment for physical examination.
- F. Title 30—Labor and Workers' Compensation
1. Source: R.S. 30:751—Alternative fuel requirements.
2. Source: R.S. 30:752—Alternative fuel requirements.
- G. Title 32—Motor Vehicle and Traffic Regulations
1. Source: R.S. 32:1—Definitions.
2. Source: R.S. 32:1—Uniform application.
3. Source: R.S. 32:52—Driver must be licensed.
4. Source: R.S. 32:53—Proper equipment required on vehicles.
5. Source: R.S. 32:57—Penalties.
6. Source: R.S. 32:58—Reasonable and proper control of vehicle.
7. Source: R.S. 32:62—Maximum speed vehicles limit; certain vehicles.
8. Source: R.S. 32:80—Overtaking and passing school buses.
9. Source: R.S. 32:171—Obedience to signal indicating approach of train.
10. Source: R.S. 32:173—Certain vehicles must stop at all railroad grade crossings.
11. Source: R.S. 32:281—Limitations on backing.
12. Source: R.S. 32:282—Obstruction to driver's view or driving mechanism.
13. Source: R.S. 32:293—Seating capacity of school buses; prohibiting standing of school children under certain circumstances; limiting number of children transported at one time.
14. Source: R.S. 32:308—Additional equipment on buses, trucks, truck tractors, trailers, semi-trailers and pole trailers.
15. Source: R.S. 32:318—Audible and visual signals on certain vehicles.
16. Source: R.S. 32:328—Special lighting equipment on school buses.

17. Source: R.S. 32:378—School bus body; bumpers; color of paint.

18. Source: R.S. 32:393.1—Records of convictions; extracts; fees.

19. Source: R.S. 32:398—Accident report; when and to whom made; information aid; fees for copies; fees for accident photographs.

20. Source: R.S. 32:402—All drivers must secure license.

21. Source: R.S. 32:403.1—Application of persons sixty years of age or above.

22. Source: R.S. 32:404—Operation of motor vehicles by nonresidents.

23. Source: R.S. 32:408—Examination of applicants required; classes of license.

24. Source: R.S. 32:414—Suspension, revocation and cancellation of license; judicial review.

25. Source: R.S. 32:417—Allowing unlicensed minor to drive parents responsible; rentals to unlicensed persons; lessor responsible; hiring unlicensed drivers; employer responsible.

26. Source: R.S. 32:601—Public liability, bodily injury and property damage insurance.

27. Source: R.S. 32:604—Actions, parties.

28. Source: R.S. 32:1301—Vehicle without required equipment or in unsafe condition.

29. Source: R.S. 32:1302—Inspection by officers of the department.

30. Source: R.S. 32:1472—Habitual offender defined.

31. Source: R.S. 45:162(17)(18)—Minimum insurance coverage.

H. Title 37—Professions and Occupations

1. Source: R.S. 37:1732—Immunity from liability for emergency medical assistance of first aid.

I. Title 42—Public Officers and Employees

1. Source: R.S. 42:691—Compulsory, retirement of public employees because of age.

J. Title 47—Revenue and Taxation

1. Source: R.S. 47:301—Sales tax exemption for certain school buses.

2. Source: R.S. 47:466—Commercial passenger vehicle license fees.

3. Source: R.S. 47:802(F)—Special fuel (LPG and CNG) tax reduction.

4. Source: R.S. 47:803—Special fuels (LPG and CNG) tax reduction.

5. Source: R.S. 47:468—School and charity buses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:639 (April 1999).

Chapter 31. Definition of Terms

§3101. Definitions

Eligible Student—R.S. 17:158 states: "Each parish and city school board shall provide transportation for any student attending a school of suitable grade approved by the State Board of Elementary and Secondary Education if the student resides more than one mile from such school and the school is within the jurisdiction boundaries of the parish or school board."

1. Paragraph F states: "The provisions of this section shall apply to eligible public and nonpublic school students. However, these provisions shall not apply to any student who attends a school which discriminates on the basis of race, creed, color or national origin."

Feeder Trip (Run)—transportation of students in private vehicles or means other than conventional bus to a designated pick-up point on a route. Feeder trip drivers are not paid as regular school bus drivers.

One-Mile Measurement—walking distance from student's driveway or entrance to the nearest public road to the walking entrance of the school building. The distance shall be measured by the most direct route, and may be along roads or walkways.

Platoon Trip (Run)—transportation of students from their home based school to another school and returning them to their home based school. Example: When instructional programs mandate that students be transported during the normal school day to a school other than the designated school of attendance.

1. Operational pay for platoon trip mileage must be started from zero mileage. No base salary is supplemented from the State Department of Education.

Preventable School Bus Accident—any accident involving a school bus resulting in death, injury or property damage, which the school bus driver failed to take all reasonable measures to prevent.

Route—the term *route* shall apply to the combined total daily trips (or runs) regularly assigned to the bus driver.

Transportation of Students Within One Mile of School—Refer to R.S. 17:158.

Trip—a trip (run) is that segment of a route in which passengers are picked up at the home bus stop and all passengers are discharged at school destination, or visa versa.

School Bus Accident—any incident in which a school bus is involved that results in death, personal injury and/or property damage, regardless of who was responsible. This applies whether the school bus was in motion, temporarily stopped, parked, being loaded, or unloaded and on public or private property.

School Bus Driver—any employee of any city or parish school board whose duty it is to transport students in any city or parish school bus or activity bus to and from any school of suitable grade approved by the Department of Education or to and from a school related activity, and who has met all the criteria established for certification and has been certified by the Department of Education. (R.S. 17:491)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:641 (April 1999).

Chapter 33. Conducting Emergency Exit Drills

§3301. Exit Drills

A. The ever increasing number of accidents on the highways necessitates that pupils be instructed on how to properly evacuate a school bus in case of an emergency. Schools shall organize and conduct emergency drills for all pupils who may ride school buses.

- B. There are several different drills:
1. everyone exits through the front entrance door;
 2. everyone exits through the rear or side emergency door(s);
 3. front half exits through the front door and rear half exits through the rear or side door;
 4. passengers utilize other emergency exits installed on specific buses.

NOTE: There is possible danger when a pupil jumps from emergency door exits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:641 (April 1999).

§3303. Reasons For Emergency Evacuations

A. Fire or Danger of Fire—the bus should be stopped and evacuated immediately if the engine or any portion of the bus is on fire. Pupils should move to a safe place 100 feet or more from the bus and remain until the driver of the bus has determined that no danger exists. Being near an existing fire and unable to move the bus away, or being near the presence of gasoline or other combustible material should be considered as "danger of fire," and pupils should be evacuated.

B. Unsafe Position—in the event that a bus is stopped due to an accident, mechanical failure, road conditions or human failure, the driver must determine immediately whether it is safe for pupils to remain in the bus or evacuate.

C. Mandatory Evacuations—the driver must evacuate if any of these conditions exist.

1. The final stopping point is in the path of any train or adjacent to any railroad tracks.

2. The stopped position of the bus changes and increases the danger. If, for example, a bus should come to rest near a body of water or near the edge of a cliff, it should be evacuated. The driver should be certain that the evacuation is carried out in a manner that affords maximum safety for the pupils.

3. The stopped position of the bus is such that there is danger of collision. In normal traffic conditions, the bus should be visible for a distance of 300 or more feet. A position over a hill or around a curve where such visibility does not exist should be considered reason for evacuation.

D. Important factors pertaining to school bus evacuation drills.

1. Safety of pupils is of the utmost importance and must be considered first.

2. All drills should be supervised by the principal or by persons assigned to act in a supervisory capacity.

3. The bus driver is responsible for the safety of the pupils; however, in an emergency, the driver may be incapacitated and unable to direct the pupil emergency evacuation. School patrol members, appointed pupils or adult monitors should direct these drills. It is important to have regular substitutes available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:642 (April 1999).

§3305. Pupils

A. Pupil Qualifications:

1. mature;
2. a good citizen, and
3. lives near the end of bus line.

B. Pupil should know how to:

1. turn off ignition switch;
2. set emergency brake;
3. summon help when and where needed;
4. use kick out windows.;
5. set reflectors and flares;
6. open and close doors and account for all pupils passing his station;
7. help small pupils off bus;
8. perform other assignments.

C. Written consent from parents should be obtained before assigning a pupil as a leader.

D. School bus evacuation drills should be organized in a manner similar to fire drills held regularly in schools. The drills should be held more often during fall and spring months, preferably when the bus arrives at the school building with the pupils.

E. Drills should be held on school property and not on bus routes. The types of bus drills held should be varied.

F. Drivers should stay in the bus during evacuation drills, and be sure that the parking brake is set, ignition is off and the transmission in gear.

G. Drivers must not permit pupils to take lunch boxes, books, etc. with them when they leave the bus. Getting the pupil off safely in the shortest possible time and in orderly fashion is the objective.

H. The pupils should go to a distance of at least 100 feet from the bus in an "emergency drill" and remain there in a group until further directions by the leader.

I. All pupils should be given an opportunity to participate, including those pupils who only ride a bus on special trips.

J. Each pupil should be instructed in the proper safety precautions while riding the bus and in drill procedures.

K. Pupils should be instructed in how and where to get help in emergencies. Instructions and telephone numbers should be posted or otherwise carried in school buses.

L. Principals must fill out Form T-8 and forward all forms to the Transportation Supervisor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:642 (April 1999).

§3307. Commercial Motor Vehicle Safety Act of 1986

A. Employer Notification Form—the Commercial Motor Vehicle Safety Act of 1986 requires drivers of commercial motor vehicles to possess only one driver's license and to be disqualified when operating a commercial motor vehicle in an unsafe manner. The undersigned employee acknowledges that he/she understands the requirements of Part 383 of the Federal Motor Carrier Safety Regulations and attest that the information contained on this form is correct to the best of his/her ability and knowledge.

Title 28
EDUCATION

**Part XXV. Bulletin 1213—Minimum Standards for
School Buses in Louisiana**

(Editor's Note: Bulletin 1213 was adopted by the Board of Elementary and Secondary Education in January, 1973 in an uncodified format, amended LR 4:428 (November 1978), LR 5:243 (August 1979), LR 8:526 (October 1982), LR 9:130 (March 1983), LR 13:291 (May 1987), LR 14:348 (June 1988), LR 14:789 (November 1988), LR 15:544 (July 1989), LR 15:962 (November 1989), LR 16:956 (November 1990), LR 16:1055 (December 1990), LR 21:259 (March 1995), and LR 23:1645 (December 1997). This present revision is being published in codified form, hence historical notes will reflect a history, by section, from this time forward.)

Chapter 1. Purpose

§101. Introduction

A. One of the most important functions of a school system's operation relative to pupil transportation is the purchasing, operation, and maintenance of safe school buses. This bulletin is designed to provide School Boards with a list of minimum standards which would allow for safe transportation of pupils. It enables bus dealers to bid competitively based on uniform standards which meet minimum specifications for every school district in the state. In addition, Optional Equipment Standards have been made a part of this bulletin in order to assist transportation officials in designing school buses which meet their specific needs.

B. The Department of Education is especially indebted to these Transportation Supervisors who have donated their valuable time and effort to the revision of this important document.

Bill Samec, Chairman	Lafayette Parish Schools
Dale Boudreaux	Jefferson Parish Schools
Chris Bowman	Lafourche Parish Schools
Harry Levy	Jefferson Davis Parish Schools
Jimmy Sibille	St. Landry Parish Schools

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:643 (April 1999).

§103. Forward

A. All pupil transportation vehicles purchased on or after July 1, 1998, shall meet or exceed the requirements herein. The appropriate sections of these specifications apply to all school buses for pupil transportation in Louisiana which are purchased, owned, or operated by a district board of education and to all school buses leased or contracted to a district board of education by private owners for the transportation of pupils to and from school and all school-related activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:643 (April 1999).

Chapter 3. General Provisions

§301. Federal Motor Vehicle Safety Standards

A. All school buses shall meet or exceed the minimum requirements of these specifications and meet or exceed all applicable Federal Motor Vehicle Safety Standards (FMVSS).

1. Subpart B—License Requirements—an employee operating a commercial motor vehicle can only have one valid driver's license issued by their state or jurisdiction of domicile.

2. Subpart C—Notification Requirements—an employee convicted of violating a state or local law relating to motor vehicle traffic control (other than parking violations), in any type of motor vehicle, must notify their employer within 30 days of conviction.

B. When an employee receives notice of suspension, revocation, cancellation, loss of privilege disqualification, and/or right to operate a commercial motor vehicle by any state or jurisdiction, the employee must notify their employer before the end of the business day following the day the employee received the notice.

C. Any employee violating Subpart B, License Requirements, and/or Subpart C, Notification Requirements, may be subject to fines not exceeding \$2,500 and/or criminal penalties up to \$5,000 including jail time.

1. Subpart D—Driver Disqualifications and Penalties—an employee convicted of driving while under the influence, leaving the scene of an accident or commission of a felony while operating a commercial motor vehicle, may be disqualified for a period of time determined by agency of jurisdiction, or may be disqualified from driving a commercial vehicle for life for a second serious offense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:642 (April 1999).

Weegie Peabody
Executive Director

9904#044

RULE

Board of Elementary and Secondary Education

Bulletin 1213—Minimum Standards for School Buses
(LAC 28:XXV.Chapters 1-17)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education adopted revised Bulletin 1213 promulgated in LR 2:187 (June 1976), referenced in LAC 28:I.915.B. Bulletin 1213 provides the minimum specifications for all pupil transportation purchased, owned or operated by a school district board of education or all school buses leased or contracted by said board. The specifications also address those buses leased or contracted to a district board of education by private owners. The revision of Bulletin 1213 was required to comply with state law and changes in the Federal Vehicle Safety Standards. This action is not required by federal regulations.

B. All school buses shall be equipped as required by the minimum specifications contained herein and as required by applicable FMVSS.

C. In the event of a conflict between the requirements of an applicable FMVSS, as referred to in §301, and the minimum specifications contained in this regulation, the requirements of the FMVSS shall prevail.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:643 (April 1999).

§303. Used School Buses

A. Any used school bus purchased for use in Louisiana by or for a school system shall meet current legal requirements of the Louisiana Revised Statutes for motor vehicles and shall meet Louisiana specifications for school buses that were in effect on the date the vehicle was manufactured.

B. No school bus may be replaced by another school bus that was manufactured before the 1978 model year. This applies to buses purchased by veteran owners/operators, by newly hired owners/operators and by school boards, individual schools, booster clubs, etc. for the purposes of transporting children to and from school and school-related activities and for use as spare buses.

C. All replacement school buses, at the time they are acquired by the owner, must be ten (10) or *less* model years old for veteran owners/operators and school districts and five (5) or *less* model years old for newly hired owners/operators. The number of years shall be reckoned from the date of introduction of the model year. (Example, a 1988 model school bus is considered 10 model years old as of 1998.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999).

§305. Changes in Specifications

A. Any part of these specifications may be changed at any time by addenda adopted by the State Board of Elementary and Secondary Education. Changes will be made to comply with changing FMVSS or statutes of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999).

§307. Certification by Manufacturers

A. All school bus vendors shall certify to the purchaser (local education agency, contract or individual), upon delivery that the school bus(es) sold for use by Louisiana school systems meet or exceed all standards specified herein and comply with the applicable FMVSS set forth by the United States Department of Transportation. (See §1701—T-10 Form)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999).

§309. Repairs

A. Any repairs or alterations to any bus that falls under the guidelines of Bulletin 1213 shall be made in accordance with

all specifications contained herein and all applicable FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999).

§311. Responsibility of Dealers and Manufacturers

A. The responsibility of compliance with Bulletin 1213 specifications rests with the vendors and manufacturers.

B. If any vendor or manufacturer sells school transportation equipment that does not conform to all these and all other applicable State and Federal specifications, the vendor shall be required to make necessary conversions to bring the vehicle into compliance. All cost related to such alteration shall be borne by the vendor.

C. Local school systems shall have the option of imposing additional specifications that meet or exceed state and federal standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999).

§313. Completion of Form T-10

A. It is mandatory that the seller of any new or used school bus shall complete a T-10 form verifying that the purchased vehicle meets all state and federal school bus specifications applicable at the time of manufacture.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999).

§315. Sanction

A. Any school bus that does not meet the minimum specifications set forth in Bulletin 1213 must not be used until such time that the bus is in compliance with said Bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999).

Chapter 5. Bus Body Standards

§501. Definition of School Bus Types

Type A—a conversion or body constructed and installed upon a van-type compact truck or front-section vehicle, with a gross vehicle weight rating of 10,000 pounds or less, designed for carrying more than 10 persons.

Type B—a conversion or body constructed and installed upon a van or front-section chassis, or stripped chassis, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

Type C—a body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. All of the engine is in front of the windshield and the entrance door is behind the front wheels.

Type D—a body installed upon a chassis, with the engine mounted in the front, midship, or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than 10 persons. The engine may be behind the windshield and beside the driver's seat. It may be at the rear

of the bus, behind the rear wheels, or midship between the front and rear axles. The entrance door is ahead of the front wheels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:644 (April 1999).

§503. Aisles

A. Minimum clearance of all aisles shall comply with current FMVSS, *School Bus Passenger Seating and Crash Protection*. All emergency doors shall be accessible by a 12" minimum aisle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§505. Auxiliary Fan

A. An auxiliary fan at least six (6) inches in diameter shall be located in the center of the windshield to provide maximum effectiveness for the right side of the windshield and the service door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§507. Back Up Audible Alarm

A. Every new and used bus purchased shall be equipped with an automatic back-up audible alarm which sounds on backing. It must be capable of emitting sound audible under normal conditions from a distance of not less than one hundred feet. The alarm shall also be capable of operating automatically when the vehicle is in neutral or a forward gear but rolls backward.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§509. Battery

A. The battery is to be furnished by the chassis manufacturer. The body manufacturer shall securely attach the battery on a slide out or swing tray in a closed, vented compartment in the body skirt, so that the battery is accessible for convenient servicing from the outside. Battery compartment door or cover shall be hinged at the front or top, and secured by an adequate and conveniently operated latch or other type fastener.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§511. Body Size

A. The "body length" shall be measured from the inside surface of the windshield to the outside surface at the rear of the bus.

5	29/30	24/25
6	35/36	29/30
7	41/42	34/35
8	47/48	39/40
9	53/54	44/45
10	59/60	49/50
11	65/66	54/55
12	71/72	59/60
13	77/78	64/65
14	83/84	69/70
15	89/90	74/75

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§513. Bumpers

A. The front and rear bumpers shall meet current FMVSS. The front bumper shall extend to the outer edges of the fenders. The rear bumper shall be 10" in width and wrapped around the back corners of the bus extended forward at least 12".

B. No trailer hitch or other device designed for towing shall be designed, fixed, or attached upon any school bus operated in the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§515. Ceiling

A. Ceiling specifications shall meet all current FMVSS. AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§517. Color

A. The school bus body, including hood and fenders, shall be painted "National School Bus Yellow."

B. The body trim, including mirrors and rub rails, shall be glossy black.

C. The grill shall be black or grey.

D. The rear bumper and lettering shall be glossy black.

E. The wheels shall be black or grey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§519. Construction

A. The construction of the school bus body shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

Number of Rows of Seats	PUPIL CAPACITY	
	3-3 Plan Rump Width of 13 Inches	3-2 Plan Rump Width of 13 Inches
4	23/24	19/20

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:645 (April 1999).

§521. Crossing Control Device

A. Every new and used bus purchased shall be equipped with a crossing control device actuated by the driver and operated in conjunction with the stop arm. The crossing control device shall pivot out from the right side of the front bumper to prevent persons from walking in front of the bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§523. Defrosters

A. Defrosters shall be of sufficient capacity to keep the windshield, window to the left of the driver, and glass in the entrance door clear of fog, frost, and snow. Defrosters shall be constructed to meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§525. Doors—Service and Emergency

A. Service and emergency doors shall be constructed and located in compliance with current FMVSS.

B. The emergency door shall be marked directly above the door with the words EMERGENCY DOOR or EMERGENCY EXIT on both the inside and outside of the bus in letters at least two (2) inches high.

C. No decals or other markings may be placed on either emergency glass panel.

D. The installation of locks on the emergency and service doors shall include a device to prevent the activation of the starter mechanism while the emergency door is locked.

E. There shall be no manual locking of any doors while the bus is in operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§527. Electrical System

A. The electrical system shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§529. Fire Extinguisher

A. Each bus shall be equipped with at least one dry-chemical type fire extinguisher with a gauge of at least five (5) pound capacity, Type A, B, C, mounted in the manufacturer's bracket and located in the driver's compartment in a clearly marked location. The fire extinguisher shall bear the label of Underwriters' Laboratories, Inc. showing a rating of not less than 2A-10B; C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§531. First Aid Kit

A. The bus shall have a removable moisture proof and dust proof first aid kit mounted in an accessible area within the driver's compartment, and shall be marked to indicate its location.

B. A minimum unit shall include the following supplies:

2	single units	Adhesive Tape—1 inch x 2 1/2 yards
2	single units	Sterile Gauze Pads—3 inches x 3 inches (12 per unit)
1	single unit	Adhesive Bandage—3 inches x 3/4 inches (100 per unit)
1	single unit	Bandage Compress—2 inch (12 per unit)
1	single unit	Bandage Compress—3 inch (12 per unit)
2	single units	Sterile Gauze Roller Bandage—2 inches x 6 yards
2	single units	Non-sterile Triangular Bandage—approximately 40 inches x 36 inches x 54 inches with 2 safety pins
3	single units	Sterile Gauze—36 inches x 36 inches (U.S.P. 2428 count)
3	single units	Sterile Eye Pad—(1 per unit)
1	pair	Scissors

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§533. Floor

A. The floor shall meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§535. Heaters

A. Heaters shall be constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§537. Identification

A. Only lettering and signs approved by state law or regulation shall appear on school buses. Lettering shall be limited to the name of the owner or operator necessary for identification, including the name of the parish/city school system. All lettering shall be in block form.

1. The lettering shall be placed as high as possible to provide maximum visibility and conform to "series B" of Standard Alphabets for Highway Signs. (Contact the National Commission on Safety Education; 1201 Sixteenth Street NW, Washington, D.C., 20036 for more information.)

B. All letters and numbers used for identification purposes shall be in glossy black enamel or glossy black vinyl decals.

1. The numbers located on the front bumper shall be of contrasting color.

C. The body shall bear the words SCHOOL BUS in glossy black letters at least eight (8) inches high on both the front and rear of the school bus or on signs attached thereto.

D. The numbering system on school buses shall be a minimum of five (5) inches in height and is required in and limited to four locations.

1. On the right side of the bus, it is behind the service door below the window line and not to exceed twenty-four (24) inches below this point.

2. On the left side, it is directly below the driver's window.

3. On the rear, it is beneath the right rear tail light.

4. On the front, it is either in the center of the front bumper, the right side of the bumper, or on a panel along the bumper. The numbers on the front bumper shall be of contrasting color to the bumper.

E. The bus shall have the name of the owner on the left side of the bus under the driver's side window in glossy black lettering at least two (2) inches in height, but not more than four (4) inches in height. The name should be the owner's legal name and should not contain nicknames, handles, etc.

F. Only the following signs/decals are approved for use on school buses:

1. decals indicating handicapped riders are on board;

2. a decal indicating the school bus stops for all railroad crossings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:646 (April 1999).

§539. Inside Height

A. The inside height shall be a nominal seventy-two (72) inches or more, measured metal to metal, at any point on the longitudinal centerline from front vertical bow to rear vertical bow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§541. Lamps and Signals

A. All school buses shall be equipped with lamps and reflectors in accordance with current FMVSS.

B. Two reflex reflectors shall be installed on each side of the bus, one at or near the front and one at or near the rear.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:467 (April 1999).

§543. Length and Width

A. The overall width of the bus shall not exceed eight (8) feet and the overall length shall not exceed forty (40) feet.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§545. Metal Treatment

A. All metal used in the construction of the bus shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§547. Mirrors

A. All buses shall be equipped with an interior mirror mounted so the driver can view the entire interior of the bus while in a normal seated driving position.

1. The interior mirror shall have rounded corners and protected edges.

B. All exterior mirrors shall be in compliance with current FMVSS.

1. All buses shall be equipped with two (2) exterior mirrors (one on each side) each giving an unobstructed view from the mounting position to the rear of the bus while the driver is in a normal seated driving position. The exterior mirrors shall be easily adjustable and rigidly mounted to reduce vibration.

C. Each bus shall have a mirror system which provides a clear, unobstructed view of the area in front of the bus and immediately adjacent to the right and left front wheels and at the entrance door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§549. Mounting

A. The body shall be mounted on the chassis in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§551. Mud Flaps

A. All buses shall be equipped with mud flaps on the rear of the vehicle or immediately behind the rear wheels.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§553. Overhead Storage

A. Overhead storage compartments or racks are not allowed in the passenger compartment of any bus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§555. Rub Rails

A. All buses shall be equipped with two rub rails constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§557. Seat Belt for Driver

A. A lap belt/shoulder harness seat belt for the bus driver shall be provided in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:647 (April 1999).

§559. Seats

A. All seats and seat covering shall be in compliance with current FMVSS.

B. All seats shall be forward facing and securely fastened to the floor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§561. Steering Wheel

A. The steering wheel shall be constructed and installed in compliance with current FMVSS and have a minimum clearance of at least two (2) inches between the steering wheel and the cowl instrument panel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§563. Steps

A. All steps shall be constructed and installed in compliance with current FMVSS.

B. The first step at the service door shall not be less than ten (10) inches and not more than fourteen (14) inches from the ground when measured from the top of the step.

C. Steps shall be enclosed to prevent the accumulation of ice and snow.

D. At least one device shall be designed to assist passengers during ingress and egress, and be of such design as to eliminate entanglement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§565. Stop Signal Arms

A. All school buses shall be equipped with two semaphore arms, constructed and placed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§567. Sun Shield

A. The sun shield shall be a minimum of six (6) inches X thirty (30) inches, adjustable, transparent, and mounted on two brackets.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§569. Undercoating

A. The entire underside of the bus body, including floor sections, cross members, and below floor line side panels, shall be coated with rust-proofing compound for which the compound manufacturer has issued notarized certification of compliance to the bus body builder that the compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§571. Ventilation

A. The body shall be equipped with a suitable controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions, without having to open windows except in extremely warm weather.

B. Static-type non-closeable exhaust ventilation shall be installed in low-pressure area of roof.

C. Roof hatches designed to provide ventilation, regardless of the exterior weather conditions, may be provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§573. Weight Distribution

A. Weight distribution of a fully-loaded bus on a level surface shall be such as not to exceed the manufacturer's front gross axle rating and rear gross axle weight rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§575. Wheel Housing

A. The wheel housing shall allow for easy tire removal and servicing and be designed to support seat and passenger loads.

B. The wheel housing shall be attached to the floor sheets in such a manner as to prevent any dust or water from entering the bus body and have an inside height of ten (10) inches or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§577. Windows

A. Each full side window, other than emergency exits designated to comply with FMVSS 217, shall provide an unobstructed emergency opening of at least nine (9) inches, but not more than thirteen (13) inches high and twenty-two (22) inches wide, obtained by lowering the window. One side window on each side of the bus may be less than twenty-two (22) inches wide.

B. Optional tinted and/or frost-free glazing may be installed in all doors, windows, and windshields consistent with federal, state, and local regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§579. Windshield

A. The windshield shall be constructed and installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§581. Windshield Washers

A. A windshield washer system shall be installed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:648 (April 1999).

§583. Windshield Wipers

A. All windshield wiper systems shall comply with current FMVSS.

B. A windshield wiping system, two speed or variable speed with an intermittent feature, shall be provided.

C. The wipers shall be operated by one or more air or electric motors of sufficient power to operate the wipers. If one motor is used, the wipers shall work in tandem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§585. Wiring

A. All wiring shall comply with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

Chapter 7. Bus Chassis Standards

§701. Chassis Specifications

A. All chassis specifications shall apply to Type A, B, C, and D school buses unless exceptions are noted in exceptions to minimum standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§703. Air Cleaner

A. The air cleaner installation shall be in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§705. Axles

A. The front and rear axle shall have a capacity which is in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§707. Battery

A. The storage battery, as established by the manufacturer's rating, shall be of sufficient capacity to care for starting, lighting, signal devices, heating, other electrical devices and have a minimum of 475 cold cranking amperes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§709. Brakes

A. All school buses shall be equipped with brakes in compliance with the current FMVSS, *Hydraulic Brake System* or *Air Brake System*, as appropriate. All repairs and/or adjustments shall meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§711. Clutch

A. Clutch torque capacity shall be equal to or greater than the engine torque output, and shall have a starter interlock device installed to prevent actuation of the starter if the clutch is not depressed. All repairs and/or adjustments shall be in compliance with the current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§713. Color

A. Chassis, including wheels and front bumper, shall be black. Body cowl, hood, and fenders shall be national school bus yellow. The flat surface of the hood may be non-reflective black or national school bus yellow.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§715. Drive Shaft

A. The drive shaft shall be protected by a metal guard or guards to prevent it from whipping through the floor or dropping to the ground.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§717. Exhaust System

A. The exhaust system shall be properly insulated from the fuel tank and fuel tank connections by a securely attached metal shield at any point where it is twelve (12) inches or less from the fuel tank.

1. Any repairs or modifications to the exhaust system shall be in compliance with this bulletin and current FMVSS.

B. The exhaust pipe, muffler, and tailpipe shall be outside the bus body and secured to the chassis.

C. The tailpipe shall be constructed of seamless or electrically welded tubing of at least 16-gauge steel or equivalent.

D. The tailpipe shall be located in such a manner as to deflect exhaust past the extreme rear corner of the bus.

1. The tailpipe shall *not* be located within twenty-two (22) inches of the center of the rear bumper and shall extend past the rear bumper at a length not to exceed two (2) inches.

2. The muffler shall be constructed of corrosion-resistant material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§719. Fenders

A. Fenders shall be constructed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:649 (April 1999).

§721. Frame

A. The frame shall be constructed in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§723. Fuel Tank

A. The fuel tank and fuel system shall be in compliance with current FMVSS and hold a minimum of thirty (30) gallons.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§725. Generator or Alternator

A. All Type A and Type B buses, up to 15,000 pounds gross vehicle weight rating, shall have a minimum 60-amp alternator.

B. All buses equipped with an electrically powered lift shall be equipped with a minimum 100-amp alternator.

C. All wiring and mounting shall be in compliance with current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§727. Governor

A. An engine speed governor is permissible. When it is desired to limit road speed, a road speed governor should be installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§729. Horn

A. Each bus shall be equipped with two (2) horns of standard make with each horn capable of producing a complex sound in bands of audio frequencies between 250 and 2,000 cycles per second.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§731. Instruments and Instrument Panel

A. The chassis shall be equipped with the following instruments and gauges (lights in lieu of gauges are not acceptable):

1. speedometer;
2. odometer;
3. voltmeter with graduated scale;
4. oil pressure gauge;
5. water temperature gauge;
6. fuel gauge;
7. high beam indicator;
8. air pressure or vacuum gauge in compliance with current FMVSS.

B. All instruments shall be easily accessible for maintenance and repair, and mounted in an instrument panel so as to be clearly visible to the driver in a normal seated position.

C. The instrument panel shall have lamps of sufficient candlepower to illuminate all instruments and gauges.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§733. Oil Filter

A. An oil filter with a replaceable element shall be provided and connected by flexible oil lines if not built in or an engine mount design. The oil filter shall have a minimum of at least one (1) quart capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§735. Openings

A. All openings in the floorboard or firewall between the chassis and the passenger compartment shall be sealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§737. Passenger Load

A. It shall be unlawful for anyone responsible for the transportation of school children on school buses, including drivers or operators of buses, transportation supervisors, school superintendents, and members of parish and city school boards to permit a number of children exceeding the number of seats available on a bus to be transported at one time on such bus. [Louisiana Statute R.S. 32:293 (C)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§739. Shock Absorbers

A. The bus shall be equipped with double action shock absorbers compatible with the manufacturer's rated axle capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§741. Springs

A. The capacity of springs or suspension assemblies shall be commensurate with the chassis manufacturer's gross vehicle weight rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§743. Steering Gear

A. The steering gear and assembly shall be in compliance with current FMVSS. Power steering is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§745. Tires and Rims

A. Recapped tires, if used, shall be used only on the rear wheels.

B. A spare tire, if carried, shall be properly mounted outside the passenger compartment.

C. Tires and rims of proper size, and tires with load rating commensurate with the chassis manufacturer's gross vehicle weight rating, shall be provided.

1. All tires and rims on a given vehicle shall be of the same size and rating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:650 (April 1999).

§747. Transmission

A. Automatic transmissions shall have no fewer than three forward speeds and one reverse speed. The shift selector shall provide an indent between each gear position when the gear selector and shift selector are not steering column mounted.

B. In manual transmissions, second gear and higher shall be synchronized.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:651 (April 1999).

§749. Undercoating

A. The undersides of the steel or metallic-constructed front fenders shall be undercoated with a rust proofing compound that meets or exceeds the requirement of paragraph 3.4 of Federal Specification TT-C-520B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:651 (April 1999).

Chapter 9. Exceptions to Minimum Standards

§901. Type "A" Buses

A. The vehicle must meet all Federal Motor Safety Standards and Specifications.

B. All minimum standards applying to Type C and Type D buses shall apply to Type A buses with the following exceptions.

1. The vehicle shall:
 - a. have a minimum headroom of sixty-three (63) inches;
 - b. be equipped with one flashing stop arm;
 - c. have a minimum gross vehicle weight of 8,200 pounds;
 - d. be equipped with a 100 ampere alternator or an 80 ampere alternator and two batteries, if it is equipped with a lift;
 - e. have a minimum aisle width of twenty-six (26) inches from front to back, if the vehicle is equipped with a lift;
 - f. have the rear bumper at manufacturer's standards equipment on van conversions or a minimum of eight (8) inches when body is constructed on a van type truck;
 - g. have a heater at manufacturer's standards;
 - h. have a grab handle not less than ten (10) inches in length and attached to the barrier.

C. Fender level marker lights are not required.

D. A barrier conforming to federal standards shall be installed on the right side immediately behind the entrance door.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:651 (April 1999).

§903. Type "B" Buses

A. The vehicle must meet all current FMVSS and Specifications.

B. All minimum standards applying to Type C and Type D buses shall apply to all Type B buses with the following exceptions.

1. The vehicle shall:
 - a. be equipped with a 100 ampere alternator or an 80 ampere alternator, or one (1) group 8D battery if equipped with a lift;
 - b. have a minimum aisle width of thirty (30) inches from front to back if the vehicle is equipped with a lift.
- C. The gross vehicle weight of the vehicle shall be more than 10,000 pounds.

D. A door may be located to the left of the driver on a GP chassis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:651 (April 1999).

Chapter 11. Standards For Specially Equipped School Buses; Vehicles Designed to Transport Students with Disabilities

§1101. General Requirements

A. Vehicles designed to transport students with disabilities shall comply generally with all minimum standards for school buses.

B. Specifications for Additional Equipment or Modifications Necessary for Special Needs Transportation

1. Wheelchair lift doors shall be located on the right side of the bus and far enough to the rear to prevent the door, when opened, from obstructing the service door.

2. The wheelchair lift door shall open outwards, and a positive fastening device shall be installed to hold the door in an open position.

3. The wheelchair lift door shall be constructed of materials as the other school bus doors and equivalent in strength.

4. The door panel(s) shall extend below the full length of the skirt when an elevator type lift is used.

5. A two panel door is optional. If used, the panels shall be of approximately equal width, equipped with hinges and hinged to the side of the bus. Both panels shall open outward.

6. A two panel door shall be equipped with at least a one-point fastening device on the rear panel to the floor or header and at least two-point devices to the floor and header on the forward door panel.

7. The door shall be equipped with a device that will actuate an audible or visible signal located in the driver's compartment when the doors are not secured.

8. Each door shall contain a fixed or moveable window aligned with the lower line of the other windows of the bus, and, as nearly as practicable, the same size as the other bus windows.

9. The forward panel shall be equipped with an overlapping flange to close the space where the panels meet.

10. A weather seal shall be provided to close all door edges.

11. Door posts and headers shall be reinforced sufficiently to provide support and strength to the areas of the side of the bus not used for service doors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:651 (April 1999).

§1103. Power Lift

A. The power lift shall have a minimum capacity of 750 pounds.

B. The power lift platform shall be a minimum of twenty-eight (28) inches wide and forty (40) inches long, including guard panels and rails.

C. The platform shall be covered with non-skid material.

D. A self-adjusting or equivalent ramp of sufficient width to minimize the incline to the lift platform shall be attached to the lift platform.

E. Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the bus.

F. A device shall be installed on the lift to prevent its operation until the door or doors are opened.

G. The power lift shall extend only from the side of the vehicle.

H. If a wheelchair lift is installed just rear of the service door, a stanchion and guard panel shall be installed between the lift and the service door.

I. A circuit breaker shall be installed between the power source and the lift motor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:652 (April 1999).

§1105. Ramps

A. Ramps are not permissible for use on Type "C" and "D" buses, except for emergency purposes.

B. Ramps shall be sufficient to hold 750 pounds of sustained weight.

C. Each ramp shall be equipped with protective flange on each longitudinal side to keep the wheelchair on the ramp.

D. The ramp shall be covered with nonskid material (i.e. webbed steel or rubberized material).

E. The ramp shall be equipped with a handle or handles and of such a weight as to permit one person to put the ramp in place and return it to the storage place.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:652 (April 1999).

§1107. Aisles

A. All aisles leading to the emergency door(s) from the wheelchair area shall be of sufficient width (minimum thirty (30) inches) to permit passage of a maximum sized wheelchair.

B. Thirty-nine (39) inch seats are permitted forward of the wheelchair area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:652 (April 1999).

§1109. Other Equipment

A. Securing devices necessary to hold portable student support equipment such as oxygen bottles, ventilators, crutches, etc. shall be installed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:652 (April 1999).

§1111. Wheelchair Fastening Devices

A. Position fastening devices shall be provided and meet current FMVSS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:652 (April 1999).

Chapter 13. Optional Equipment

§1301. Specifications

A. A system to monitor the exterior lights on the front and rear of the bus from the driver's seated position is permissible. Such a system shall indicate to the driver whether a light is operating.

B. A power service door is permissible if it is equipped with a manual override that allows the driver to manually operate the door if the power system fails.

C. A public address system with speakers inside and outside the bus is permissible if it is equipped with a selector switch that permits the driver to select "inside" or "outside" speakers and is mounted in the driver's compartment.

D. A lock with two (2) keys is permissible to be installed on the fuel supply service door.

E. An AM or FM radio, cassette player, or compact disc player are permissible.

F. Fog lamps are permissible and shall conform to current FMVSS.

G. Two way radio systems and/or cellular phones are permissible.

H. Buses may be equipped with four (4) seven (7) inch arrow faced turn signals.

I. Buses may be equipped with a fuel gauge inspection plate located immediately above the sending unit.

J. A seat designed for the bus attendant is permissible. The attendant's seat must be installed facing either the front or rear of the bus.

K. Body fluid clean-up kits are permissible.

L. Additional emergency exits are allowed provided they meet current FMVSS.

M. A bus may be equipped with tinted windows provided the window is shaded within Louisiana Department of Public Safety guidelines.

N. A heater booster pump may be installed on diesel powered buses.

O. An engine pre-heating device may be installed on diesel powered buses.

P. Combination side marker/turn signals may be installed.

Q. If the stop arm is electrically controlled, it is permissible to equip it with a slip clutch for motor and transmission protection.

R. Alternative fuel systems are allowed provided they meet current FMVSS.

S. A clear lens strobe light may be installed on the rear one-third of the bus.

T. A video system to monitor driver and student behavior may be installed.

U. Exterior motion devices may be installed.

V. Buses may be equipped with low profile tires.

W. Reflective bus markings are allowed provided they meet all current FMVSS and state regulations.

X. Electronic security systems are permissible.

Y. Hubometers are permissible.

Z. Bus roofs may be painted white. The white paint may not extend beyond the drip rail. Front and rear caps must remain yellow.

AA. External baggage compartments are allowed.

BB. Diesel engine noise reduction packages are allowed.

CC. Seat spacing may be altered to accommodate special devices. All seats must be forward facing.

DD. An electronically controlled "cruise control" is permissible.

EE. LED type stop arms are permissible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:652 (April 1999).

Chapter 15. Motor and Chassis Specifications

§1501. Motor

A. The chassis shall be equipped with a diesel engine that meets the specifications shown in the following table. It must also be a truck type engine. Diesel powered vehicles with hydraulically assisted hydraulic brakes shall have a chassis air or vacuum for stop arm operation. The vehicle shall also be equipped with power steering, dual horns, batteries with 1875 CCA, and front and rear shock absorbers.

Capacity	48 or less	53/54	59/60	65/66	71/72	77/78 or greater
Tire Size	09R x 22.5	10R x 22.5	10R x 22.5	10R x 22.5	11R x 22.5	11R x 22.5 (14ply)
Rim Size	22.5	22.5	22.5	22.5	22.5	22.5
Gross Vehicle Weight Rating	22,500	26,500	29,000	29,000	31,000	33,000
Gross Horsepower	180	190	190	190	190	210
Forward Transmission Speeds	4	4	4	4	4	5
Front Axle	7,500	9,000	10,000	10,000	12,000	12,000
Rear Axle	15,000	17,500	19,000	19,000	19,000	21,000
Alternator	130	130	130	130	130	130
Front Springs	7,500	9,000	10,000	10,000	12,000	12,000
Rear Springs	15,000	17,500	19,000	19,000	19,000	21,000

Note: Where buses require flat type floors 19.5" tires are allowed if Gross Vehicle Weight Rating requirements are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:653 (April 1999).

Chapter 17. Appendix A

§1701. T-10 Form

MANDATORY

FORM T-10

REV: 7/94

STATE DEPARTMENT OF EDUCATION DATE: _____
 GUARANTEED FROZEN MILEAGE: _____

I propose to sell _____ the following described NEW/USED school bus.

(Contract Owner or School Board)

(circle one)

CHASSIS _____

YEAR MODEL _____

MAKE _____

SERIAL NUMBER _____

MILEAGE _____

CONDITION _____

This vehicle meets all Federal Motor Vehicle Safety Standards and Bulletin 1213 specifications applicable at the date of manufacture.

I verify that the above information is true and correct to the best of my knowledge.

OFFICIAL PURCHASE AGREEMENT DATE: _____

LICENSE NUMBER: _____

 SIGNATURE (Seller)

 COMPANY

 ADDRESS

Purchased by: _____ Approved by: _____
 SIGNATURE

LOCAL SCHOOL SYSTEM

 ADDRESS

 SIGNATURE OF LOCAL SCHOOL SYSTEM SUPERINTENDENT/TRANSPORTATION SUPERVISOR

COPIES SENT TO:

WHITE/STATE DEPARTMENT OF EDUCATION
 CANARY/TRANSPORTATION DEPARTMENT

PINK/PURCHASER

GOLD/VENDOR

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:158, R.S. 17:160-161, and R.S. 17:164-166.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:653 (April 1999).

Weegie Peabody
 Executive Director

9904#071

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Student Financial Assistance Commission Bylaws
(LAC 28:V.113)

The Louisiana Student Financial Assistance Commission (LASFAC), the statutory body created by R.S. 17:3021 et seq., in compliance with R.S. 49:952 of the Administrative Procedure Act, hereby announces revision of its governing Bylaws, as follows:

**Title 28
EDUCATION**

**Part V. Student Financial Assistance—Higher
Education Loan Program**

**Chapter 1. Student Financial Assistance Commission
Bylaws**

**§113. Rights, Duties and Responsibilities of the
Executive Staff of the Commission**

A. - F. ...

G. Recording Secretary. The executive director shall appoint a recording secretary whose duties shall include giving or causing to be given notice of all meetings of the commission and its committees as required by the Administrative Procedures Act or these Bylaws, to record and prepare the minutes of all commission meetings and meetings of its committees and to maintain and provide for the safekeeping of all minutes and other official documents of the commission. The recording secretary shall have the authority to provide copies of the official records of the commission as required by the public records laws of the State of Louisiana or as otherwise directed by the commission or the executive director and to certify the authenticity of such records and the signatures of members of the commission, the executive director or others acting in their official capacity on behalf of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), amended LR 24:1265 (July 1998), LR 25:654 (April 1999).

Jack L. Guinn
Executive Director

9904#002

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Tuition Opportunity Program for Students (TOPS)—
Higher Education Scholarship and Grant Programs
(LAC 28:IV.301, 503, 703, 705)

The Louisiana Student Financial Assistance Commission (LASFAC) is amending rules of the Tuition Opportunity Program for Students, LAC 28:IV.

**Title 28
EDUCATION**

**Part IV. Student Financial Assistance—Higher
Education Scholarship and Grant Programs**

Chapter 3. Definitions

§301. Definitions

* * *

Cumulative High School Grade Point Average—the final cumulative high school grade point average calculated on a 4.00 scale for all courses attempted. Effective beginning with graduates in academic year 2000-2001, the Cumulative High School Grade Point Average shall be calculated by using only the course grades achieved for those courses included in the core curriculum and recorded on the official transcript reported to the Louisiana Department of Education. For those high schools that utilize other than a 4.00 scale, all grade values must be converted to a 4.00 scale utilizing the following formula:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} \cdot \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$
$$\frac{3.00}{5.00} \cdot \frac{X}{4.00}$$

By cross multiplying,

$$5X \cdot 12; X \cdot 2.40$$

Quality points = Credit for course multiplied by the value assigned to the letter grade.

* * *

Louisiana Resident—

a. any independent student or any dependent student with at least one parent or legal guardian who has resided in the state for a minimum of 24 consecutive months immediately preceding a certain date or the date of a specified event that is further defined by the programs found in Part IV

of these rules, or some other period of residency which is required to qualify the person for a specific program administered by the LASFAC. To qualify for a program under Part IV of these rules, in addition to the certification of residency found on the application form, the administering agency may require an independent student applicant or the parent(s) or legal guardian of a dependent student applicant to show proof of residency. Residency may be established by completion of a standard affidavit developed by the administering agency. Such affidavits must be completed in their entirety by the independent student applicant or by at least one parent or legal guardian of the dependent student applicant and be sworn to and notarized by a licensed notary public. Further, the affiant shall be required to submit records in support of the affidavit to include the following records and such other records as may be required by the administering agency:

- i. if registered to vote, a Louisiana voters registration card; and
- ii. if licensed to drive a motor vehicle, a Louisiana driver's license; and
- iii. if owning a motor vehicle located in Louisiana, a Louisiana registration for that vehicle; and
- iv. if earning a reportable income, a Louisiana tax return.

b. any member of the Armed Forces on active duty whose official military personnel or pay records show that the member claims Louisiana as his home of record and who has filed a Louisiana tax return for the most recent two years in compliance with a.iv, above.

* * *

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 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:654 (April 1999).

Chapter 5. Application; Application Deadlines and Proof of Compliance

§503. Application Deadlines

* * *

B. Final Deadline. The final deadline for receipt of a student's initial application for state aid is July 1st of the high school academic year (which includes the Fall, Spring and Summer sessions) in which a student graduates. To renew an award in subsequent years, annual applications must be received by the July 1st deadline. Any student submitting an application for state aid after the Final Deadline will be ineligible for the requested aid. An application for renewal of an award in a subsequent year received after the July 1 deadline will not be processed, and the student will not be eligible for an award in that year. For example, for a student graduating in the 1998-1999 high school academic year, the student must submit an application (the Free Application for Federal Student Aid) to be received by the federal processor by July 1, 1999 and must submit an application to be received by the July 1st deadline for every year thereafter in which the student desires to renew the award.

* * *

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 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 25:655 (April 1999).

Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity; Performance and Honors Awards

§703. Establishing Eligibility

A. - 4.f. ...

g. all students must apply for an award by July 1st of the high school academic year (which includes the Fall, Spring and Summer sessions) in which they graduate to establish their initial qualification for an award. For a student entitled to defer acceptance of an award under section 703.A.4.b. or d., that student must apply by July 1st of the high school academic year in which the student graduates and must also apply by July 1st prior to the academic year in which the student intends to first accept the award, and every year of eligibility thereafter.

5.a. ...

i. at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work constituting a core curriculum as follows:

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or Comparable Advanced Math
1	Biology I
1	Chemistry I
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II or Physics, Physics II or Physics for Technology
1	American History
1	World History, World Culture, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or Civics (one unit, nonpublic)
1	Fine Arts Survey; (or substitute two units Performance courses in Music, Dance and/or Theater; or two units of Studio Art or Visual Art; or one elective from among the other subjects listed in this core curriculum)
2	In the Same Foreign Language (one unit or credit for three or more hours of college foreign language for students graduating from high school during the 1996-97 and 1997-98 school years).

1/2

Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education; (or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum)

ii. - F. ...

G.1. A student who enters a college or university under an early admissions program prior to high school graduation will be eligible for an appropriate award under the following conditions:

a. - d. ...

2. A student who graduates from high school in less than four years or who enters a college or university early admissions program prior to graduation from high school shall be considered a First-Time Freshman, as defined in §703, not earlier than the first semester following the academic year in which the student would have normally graduated had he or she not graduated early or entered an early admissions program. A student who graduates high school in less than four years or enters an early admissions program will remain eligible for a TOPS award until the semester or term, excluding summer semesters or sessions, immediately following the first anniversary of the date that the student normally would have graduated.

* * *

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 24:635 (April 1998), amended LR 24:1901 (October 1998), LR 25:655 (April 1999).

§705. Maintaining Eligibility

* * *

C. In the event the administering agency determines that an ineligible student has received an award as the result of an administrative error or erroneous information provided by the student or the student's parent(s) or legal guardian or incorrect certification from the student's high school, the student's eligibility for the award shall be terminated and no further awards shall be made to the ineligible student. If an ineligible student has received an award due to an administrative error or incorrect certification, the administering agency will not pursue recoupment from the student of funds that were awarded. If an erroneous award has been made and the administering agency determines that the award was made based upon incorrect information submitted by the student or the student's parent(s) or legal guardian, the administering agency may seek reimbursement from the student, the student's parent(s) or legal guardian, and if it is further determined that the award was made due to an intentional misrepresentation by the student, the student's parent(s) or legal guardian, then the administering agency shall refer the case to the Attorney General for investigation and prosecution. If a student or the student's parent(s) or legal guardian is suspected of having intentionally misrepresented the facts which were provided to the administering agency and used by it to determine the eligibility of the student for the program and the administering agency has referred the case to the Attorney General for

investigation, then the student shall remain ineligible for future award consideration pending an outcome of said investigation which is favorable to the student.

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 24:637 (April 1998), amended LR 24:1904 (October 1998), LR 25:656 (April 1999).

Jack L. Guinn
Executive Director

9904#003

RULE

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

**Control of Emissions of Smoke
(LAC 33:III.1105)(AQ183)**

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 Quality Division regulations, LAC 33:III.1105 (AQ183).

The limitation on the shade or appearance of emissions will be changed from Number 1 on the Ringlemann Chart to 20 percent opacity. The regulation mentions Chapter 15, Table 4, which references 40 CFR Part 60, Method 9 and Method 22 for measurement of visible emissions. This rule applies to flares and other similar devices used for burning in connection with pressure valve releases for control over process upsets. The basis and rationale for this rule are to clarify the existing language.

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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 11. Control of Emissions of Smoke

§1105. Smoke from Flaring Shall Not Exceed 20 Percent Opacity

The emission of smoke from a flare or other similar device used for burning in connection with pressure valve releases for control over process upsets shall be controlled so that the shade or appearance of the emission does not exceed 20 percent opacity (LAC 33:III.1503.Table 4) for a combined total of six hours in any 10 consecutive days. If it appears the emergency cannot be controlled in six hours, the administrative authority shall be notified by the emitter as soon as possible after the start of the upset period. Such notification does not imply the administrative authority will automatically grant an exemption to the source(s) of excessive emissions.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 25:656 (April 1999).

Gus Von Bodungen, P.E.
Assistant Secretary

9904#046

RULE

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

**Storage of Volatile Organic Compounds
(LAC 33:III.2103)(AQ185)**

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 Quality Division regulations, LAC 33:III.2103 (Log Number AQ185).

Additional methods will be allowed for the measurement of Reid vapor pressure. The allowed methods are ASTM D323, ASTM D4953, ASTM D5190, and ASTM D5191. The use of these methods was requested by a facility subject to the rule. The basis and rationale for this rule are to allow alternate test methods that are technically sound and that are allowed by other states.

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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2103. Storage of Volatile Organic Compounds

* * *

[See Prior Text in A-H.3.a]

b. by ASTM Test Methods D323, D4953, or D5190 for the measurement of Reid vapor pressure, and adjusted for actual storage temperature using the nomographs contained in API Bulletin 2517;

* * *

[See Prior Text in H.3.c]

d. determined by ASTM Test Method D2879 or D5191; or

* * *

[See Prior Text in H.3.e-1.6]

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

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

15:1065 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:27 (January 1990), LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 24:20 (January 1998), LR 24:2242 (December 1998), LR 25:657 (April 1999).

Gus Von Bodungen, P.E.
Assistant Secretary

9904#038

RULE

**Department of Environmental Quality
Office of the Secretary**

**Civil Penalty Assessment
(LAC 33:I.Chapter 7)(OS026)**

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 Office of the Secretary regulations, LAC 33:I.Chapter 7(OS026).

This rule will establish a consistent department-wide approach for the assessment of civil penalties. Included in this assessment is the consideration of multiple violations, gravity of any violation committed, and that economic incentives for noncompliance are eliminated. This regulation is designed to promote the goals of deterrence, as well as, to provide fair and equitable treatment of the regulated community. The Louisiana Environmental Quality Act, R.S. 30:2050.3, requires the secretary to establish criteria for the assessment of consistent department-wide penalties based upon the nine factors found in R.S. 30:2025(E). The basis and rationale for this rule are to comply with R.S. 30:2050.3.

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

Title 33

ENVIRONMENTAL QUALITY

Part 1. Office of the Secretary

**Subpart 1. Departmental Administrative Procedures
Chapter 7. Penalties**

§701. Scope

A. The intent of this Chapter is to assure that, after the department has determined a penalty is to be assessed for one or more violations, each penalty is assessed in a consistent, fair, and equitable manner; that penalties are appropriate for the gravity of the violation committed; that economic incentives for noncompliance are eliminated; that penalties are sufficient to deter persons from committing future violations; and that compliance is expeditiously achieved and maintained.

B. After considering the nine factors in R.S. 30:2025(E)(3)(a), the department realizes there may be circumstances where violations have occurred that do not warrant a penalty action.

C. This Chapter is to be utilized by the department only after it has determined that a penalty is to be assessed for a specific violation unless otherwise specified by rule or regulation. Nothing in this Chapter applies to the determination of whether to assess a penalty, or to the compromise or settlement of a penalty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:657 (April 1999).

§703. Definitions

For purposes of this Chapter, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise:

Nine Factors—the factors listed in R.S. 30:2025(E)(3)(a) and considered by the department in determining whether or not a civil penalty is to be assessed and in determining the amount agreed upon in compromise. The nine factors are as follows:

- a. the history of previous violations or repeated noncompliance;
- b. the nature and gravity of the violation;
- c. the gross revenues generated by the respondent;
- d. the degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;
- e. the monetary benefits realized through noncompliance.
- f. the degree of risk to human health or property caused by the violation;
- g. whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged;
- h. whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by his noncompliance or violation; and
- i. the costs of bringing and prosecuting an enforcement action, such as staff time, equipment use, hearing records, and expert assistance.

Penalty Event—any violation [as defined in R.S. 30:2004(21)] for which the administrative authority, after consideration of the factors listed in R.S. 30:2025(E)(3)(a), determines a penalty is warranted. For violations lasting more than one 24-hour day, each such day of violation may be treated as a separate penalty event.

Response Costs—the costs to the state of any response action made necessary by a penalty event that are not voluntarily paid by the violator. These costs shall include, but are not limited to, the costs of surveillance staff activities including cleanup costs and the costs of bringing and prosecuting an enforcement action, such as staff time, equipment use, hearing records, and expert assistance.

Violation Specific Factor—the two of the nine factors considered when plotting a violation on the penalty matrix. Each factor is weighed consistently without regard to the violator, and no special circumstances or violator-specific factors are considered when plotting the violation on the penalty matrix. These factors include:

- a. the nature and gravity of the violation; and
- b. the degree of risk to human health or property caused by the violation.

Violator-Specific Factor—the five of the nine factors considered when adjusting the difference between the minimum and maximum penalty range within a particular cell on the penalty matrix. The degree of adjustment in a particular penalty range on the penalty matrix will vary depending upon the specific and unique circumstances of these five factors. These factors include:

- a. the history of previous violations or repeated noncompliance;
- b. the gross revenues generated by the respondent;
- c. the degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;
- d. whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by his noncompliance or violation; and
- e. whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:658 (April 1999).

§705. Penalty Determination Methodology

A. A penalty range for each penalty event is calculated based on the two violation-specific factors. The two violation-specific factors are plotted on the penalty matrix to determine a penalty range for a particular penalty event (see Table 1). The various penalty ranges for a penalty event are found inside each cell of the penalty matrix.

Table 1. Penalty Matrix				
	Nature and Gravity of the Violation			
		Major	Moderate	Minor
Degree of Risk/Impact to Human Health or Property	Major	\$25,000 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$11,000
	Moderate	\$11,000 to \$8,000	\$8,000 to \$5,000	\$5,000 to \$3,000
	Minor	\$3,000 to \$1,500	\$1,500 to \$500	\$500 to \$100

1. *Penalty Matrix*—Degree of Risk to Human Health or Property. The first stage of the penalty calculation involves the categorization of each penalty event as major, moderate, or minor with regard to its degree of risk to human health or property. The following criteria are used to categorize each penalty event with regard to its degree of risk to human health or property:

- a. *Major*. Refers to a violation in which actual measurable harm or substantial risk of harm to the environment or public health occurs. The noncompliance

results in, or would reasonably be expected to result in, the temporary or permanent loss of a use of the environmental resource. A violation of major impact and hazard may be one characterized by high volume and/or frequent occurrence and/or high pollutant concentration. Such violations may have a detrimental impact on sensitive environments or include the discharge of toxic pollutants;

b. Moderate. Refers to a violation that has the potential for measurable detrimental impact on the environment or public health. A violation of moderate impact and hazard may be one characterized by occasional occurrence and/or pollutant concentration that may be expected to have a detrimental effect under certain conditions; and

c. Minor. Refers to a violation that does not directly present actual harm or substantial risk of harm to the environment or public health. Violations that are isolated single incidences and that cause no measurable detrimental effect to the environment or public health may be considered minor. Violations that are administrative in nature may be, but are not necessarily, considered minor.

2. Penalty Matrix—Nature and Gravity of the Violation. The second stage of the penalty calculation involves the categorization of each penalty event as major, moderate, or minor with regard to its nature and gravity. The following criteria are used to categorize each penalty event with regard to its nature and gravity:

a. Major. Refers to violations of applicable statutes, regulations, orders, permit limits, or permit requirements that result in negating the intent of the requirement. The respondent deviates significantly from the requirements of the statutes, regulations, or permit to such an extent that little or no implementation of requirements occurs;

b. Moderate. Refers to violations of applicable statutes, regulations, orders, permit limits, or permit requirements that result in substantially negating the intent of the requirement. The respondent deviates from the requirements of the statutes, regulations, or permit, but some implementation of the requirements occurred; and

c. Minor. Refers to violations of applicable statutes, regulations, orders, permit limits, or permit requirements that result in some deviation from the intent of the requirement. The respondent deviates somewhat from the requirements of the statutes, regulations, or permit; however, substantial implementation of the requirements occurred.

B. Once a penalty event has been categorized as major, moderate, or minor for both its degree of risk to human health or property and its nature and gravity, a penalty range is obtained by plotting these two categorizations with the corresponding cell of the penalty matrix.

C. Violator-Specific Factors (Adjustment Factors) Per Event. The next stage of the penalty calculation involves the adjustment of the penalty using the following violator-specific factors:

1. the history of previous violations or repeated noncompliance;
2. the gross revenues generated by the respondent;
3. the degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;
4. whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation; and

5. whether the noncompliance or violation and the surrounding circumstances were immediately reported to the department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.

D. The five violator-specific factors are used to adjust the penalty amount for each penalty event. Each violator-specific factor is assigned a percentage adjustment on a case by case basis. The upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The five percentages are added together to calculate a total percentage adjustment for the penalty range for the penalty event. The total upward or downward percentage adjustment is also limited to 100 percent. The total percentage adjustment is multiplied by the difference between the minimum and maximum penalty amount for the chosen matrix cell. The product is then added to, or subtracted from, the minimum penalty amount in the chosen matrix cell.

E. The information obtained from the violation-specific and violator-specific factors can be entered into one of the following formula(s) to obtain a penalty amount (P_n) for each penalty event:

$$P_n = A_n + (B_n \times [C_n - A_n])$$
$$P_n = 2(A_n + [B_n \times (C_n - A_n)]) *$$

where:

P_n = penalty amount for a given penalty event.

A_n = the minimum value of the penalty range for the cell located on the penalty matrix for a given penalty event.

B_n = the sum of percentage adjustments calculated for a given penalty event, where 100 percent \$ B \$ -100 percent.

C_n = the maximum value of the penalty range for the cell located on the penalty matrix for a given penalty event.

* *Note:* The statutory maximum is double in circumstances where the penalty event constitutes a violation of a previous enforcement action as stated in R.S. 30:2025 (E)(2).

F. The values for each penalty amount (P_n) are added to determine a penalty subtotal (P_s):

$$P_s = P_1 + P_2 + P_3 \dots$$

G. The department shall consider the monetary benefits realized through noncompliance. Any monetary benefits calculated may be added to the penalty subtotal. However, the amount calculated may not cause the penalty subtotal to exceed the maximum penalty amount allowed by law.

H. Response costs (R_c) are then added to the penalty subtotal (P_s) to determine the total penalty amount (P_t):

$$P_t = P_s + R_c$$

I. In accordance with R.S. 30:2025 (E)(1)(a), the department reserves the right to assess an additional penalty of not more than \$1,000,000 for any penalty event that is done intentionally, willfully, or knowingly, or results in a discharge or disposal that causes irreparable or severe damage to the environment or if the substance discharged is one which endangers human life or health.

J. In circumstances where the respondent has provided, or has agreed to provide, a grant, donation, or other form of assistance with respect to a designated pollution source, as provided in R.S. 30:2031, the penalty amount may be reduced

by the monetary value of such grant, donation, or other form of assistance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:658 (April 1999).

Dale Givens
Secretary

9904#036

RULE

Department of Environmental Quality Office of the Secretary

Permit Qualifications and Requirements (LAC 33:I.1701; III.501, 517, 5111; V.515; VII. 517, 520; IX.2331, 2387, 2407, 2765, 2769)(OS029)

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 Environmental Quality regulations, LAC 33:I.1701; III.501, 517, and 5111; V.515; VII.517 and 520; IX.2331, 2387, 2407, 2765, and 2769 (Log # OS029).

The rule requires that applicants for an environmental permit, or for transfer of ownership of a permit, meet certain requirements and also requires that an applicant provide the department with a list of states(s) where the applicant has similar or identical federal or state environmental permits. This rule is required by the Louisiana Environmental Quality Act, R.S. 30:2014.2. The basis and rationale for the rule are to comply with R.S. 30:2014.2.

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

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures Chapter 17. Permit Qualifications and Requirements §1701. Requirements for Obtaining a Permit

A. In addition to meeting the requirements for permits outlined in the applicable sections of the Environmental Quality Regulations, an applicant shall:

1. have no history of environmental violation(s) that demonstrates to the department an unwillingness or inability to achieve and maintain compliance with the permit for which the application is being made, unless the department determines that the applicant's history of environmental violation(s) can be adequately addressed by permit conditions;

2. if required, register with the Secretary of State;

3. owe no outstanding fees or final penalties to the department; and

4. if under a compliance schedule, be making satisfactory progress in meeting the conditions of the compliance schedule.

B. Before issuing any permit or transfer of ownership of a permit, the administrative authority may conduct an evaluation of the applicant related to the management of any facilities or

activities subject to regulation under any applicable air, water, solid waste, hazardous waste, radiation control, or other environmental programs administered by the various states of the United States or by the federal government. If, pursuant to this evaluation, the administrative authority determines that the applicant has demonstrated an unwillingness or inability to achieve and maintain compliance with the permit for which application is being made, the administrative authority may:

1. include such conditions in the permit as reasonably deemed necessary for the protection of human health and the environment; or

2. deny any application for the issuance or transfer of the permit.

C. The applicant shall provide to the department a list of the state(s) where he or she has federal or state environmental permits identical to, or of a similar nature to, the permit for which application is being made. This information shall be provided for all individuals, partnerships, corporations, or other entities who own a controlling interest (50 percent or more) in the company or who participate in the environmental management of the facility for an entity applying for a permit or an ownership interest.

D. In addition to providing the information required in Subsection C of this Section, the applicant shall submit a written statement, as part of the permit application, to certify that:

1. if required, the applicant has registered with the Secretary of State; and

2. no outstanding fees or final penalties are owed to the department.

E. The administrative authority may require the submission of additional information if the administrative authority deems such information necessary in order to make a determination under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2014.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:660 (April 1999).

Part III. Air Quality

Chapter 5. Permit Procedures

§501. Scope and Applicability

* * *

[See Prior Text in A-C.9]

10. Before issuing any permit for a new or existing source or transfer of ownership of a permit, the administrative authority may conduct an evaluation of the applicant and may include such conditions in the permit as reasonably deemed necessary for the protection of human health and the environment or may deny any application for the issuance, renewal, or transfer of the permit. Requirements of LAC 33:I.1701 are not applicable to permit modifications, unless such modifications include or are limited to a change of ownership.

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 Department of Environmental Quality, 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).

§517. Permit Applications and Submittal of Information

* * *

[See Prior Text in A-F]

G. Change of Ownership. Notification of any change in ownership must be given to the permitting authority within 90 days after the change. Such notification need not require a complete permit application submittal, but shall be provided in accordance with forms or guidance from the permitting authority and in accordance with requirements of LAC 33:I.1701. The administrative authority is authorized to amend the permit to reflect such changes in accordance with LAC 33:III.521. Failure to disclose such changes of ownership within 90 days after the event will be grounds for invalidation of the permit. Based on review of the compliance history of the new owner, the administrative authority has the right to deny the transfer of the permit in accordance with provisions of LAC 33:I.1701. Changes in ownership of a source holding grandfathered status will require that a permit application be submitted in accordance with LAC 33:III.501.B.6 and Subsection A.3 of this Section.

H. Additional requirements for permits and transfer of ownership of permits are provided in LAC 33:I.1701. Requirements of LAC 33:I.1701 are not applicable to permit modifications, unless such modifications include or are limited to a change of ownership.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended LR 20:1375 (December 1994), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:405 (April 1997), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:661 (April 1999).

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

§5111. Permit Requirements, Application, and Review

* * *

[See Prior Text in A]

1. Before commencement of the construction of any new source, the owner or operator of such source shall obtain a Louisiana Air Permit in accordance with Subsections B and C of this Section and in accordance with LAC 33:I.1701.

* * *

[See Prior Text in A.2-5]

6. Requirements of LAC 33:1701 are not applicable to permit modifications, unless such modifications include or are limited to a change of ownership.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and R.S. 30:2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:891 (July 1993),

repromulgated LR 19:1314 (October 1993), LR 23:59 (January 1997), amended by the Office of the Secretary, LR 25:661 (April 1999).

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 5. Permit Application Contents

Subchapter C. Permit Applications: Parts I and II

§515. Part I Information Requirements

* * *

[See Prior Text in A-A.22]

23. list other states in which hazardous waste operations are or have been conducted, as required by LAC 33:I.1701;

24. zoning of site, if applicable;

25. for hazardous debris: a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility;

26. other information required in LAC 33:I.1701; and

27. comments.

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 21:266 (March 1995), amended by the Office of the Secretary, LR 25:661 (April 1999).

Part VII. Solid Waste

Chapter 5. Solid Waste Management System

Subchapter A. Administration, Classification, and Inspection Procedures

§517. Permit Modifications

* * *

[See Prior Text in A-A.1.b]

i. a statement from the proposed permit holder assuming liability for existing violations and conditions;

ii. proof of financial responsibility by the proposed permit holder, as required by LAC 33:VII.727.A.1 and 2; and

iii. information required in LAC 33:I.1701.

* * *

[See Prior Text in A.2-4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2014.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 25:661 (April 1999).

§520. Compliance Information

All applicants for solid waste permits shall comply with the requirements of LAC 33:I.1701.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2014.2.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:661 (April 1999).

Part IX. Water Quality Regulations

Chapter 23. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Subchapter B. Permit Application and Special LPDES Program Requirements

§2331. Application for a Permit

* * *

[See Prior Text in A-E]

F. Information Requirements. All applicants for LPDES permits shall provide the following information to the state administrative authority, using the application form provided by the state administrative authority (additional information required of applicants is set forth in Subsections G - K of this Section and LAC 33:I.1701):

* * *

[See Prior Text in F.1-8]

9. additional application requirements in LAC 33:IX.2765.A and LAC 33:I.1701.

* * *

[See Prior Text in G-1 EDITORIAL NOTE]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999).

Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination of Permits
§2387. Termination of Permits

* * *

[See Prior Text in A-A.4]

5. additional causes of termination contained in LAC 33:IX.2769.

* * *

[See Prior Text in B]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:725 (June 1997), amended by the Office of the Secretary, LR 25:662 (April 1999).

§2407. Modification, Revocation and Reissuance, or Termination of Permits

A. Permits may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the state administrative authority's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in LAC 33:IX.2383, 2387, or 2769. All requests shall be in writing and shall contain facts or reasons supporting the request.

* * *

[See Prior Text in B.1-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:725 (June 1997), LR 23:1524 (November 1997), amended by the Office of the Secretary, LR 25:662 (April 1999).

Subchapter V. Additional Requirements Applicable to the LPDES Program

§2765. Additional LPDES Permit Application Requirements

* * *

[See Prior Text in A-A.2]

B. In addition to the requirements in LAC 33:I.1701 and LAC 33:IX.2331.G.1, H.1, and K.1, all applicants shall provide the following information to the administrative

authority using the application form provided by the office, unless the office determines that such information is not required for the applicant's facility or activity:

* * *

[See Prior Text in B.1-3]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of the Secretary, LR 25:662 (April 1999).

§2769. Additional Requirements for Permit Renewal and Termination

A. The following are causes, in addition to those found in LAC 33:IX.2387, for terminating a permit during its term or for denying a permit renewal:

* * *

[See Prior Text in A.1-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:726 (June 1997), amended by the Office of the Secretary, LR 25:662 (April 1999).

J. Dale Givens
Assistant Secretary

9904#035

RULE

Office of the Governor
Commission on Law Enforcement and Administration of Criminal Justice

Peace Officers—Standards and Training
(LAC 22:III.Chapter 47)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice has amended its rules and regulations relative to the training of peace officers.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4701. Definitions

A. The following terms, as used in these regulations, shall have the following meanings.

Law Enforcement Training Course—a basic or advanced course of study certified by the Council on Peace Officer Standards and Training (POST), for the purpose of educating and training persons in the skills and techniques of a peace officer in the discharge of his duties.

Peace Officer—any full-time employee of the state, a municipality, a sheriff or other public agency, whose

permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, highway laws of this state, but not including any elected or appointed head of a law enforcement department. Peace officer also includes those sheriff's deputies whose duties include the care, custody and control of inmates.

Training Center—any POST accredited school, academy, institute, or any place of learning whatsoever, which offers or conducts a law enforcement or corrections training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:662 (April 1999).

§4703. Basic Certification

A. All full-time peace officers, as defined in R.S. 40:2402, shall complete a basic training course as prescribed and certified by the Council on Peace Officers Standards and Training (POST Council). Reserve or part-time officers or military police officers stationed in Louisiana may be eligible for certification if they successfully complete a basic training course prescribed for full-time peace officers and pass the POST statewide examination. There are three levels of POST certification.

1. Level 1 Certification for Basic Law Enforcement Peace Officers

a. The student will complete a training course with a minimum of 320 hours for full certification. Level 1 certification requires that the student meet the POST requirements for firearm certification.

2. Level 2 Certification for Basic Correctional Peace Officer

a. The student will complete a training course with a minimum of 218 hours and is limited to those peace officers whose duties are the care, custody, and control of inmates. The training course consists of the ACA core curriculum plus a sufficient number of hours to obtain POST certification. POST Firearm certification for Level 2 students is optional. 3 .

Level 3 Certification for Jailer Training Officers

a. The student will complete a training course with a minimum of 90 hours and is limited to those correctional officers whose duties are the care, custody, and control of inmates. This course consists of the ACA core correctional officer curriculum. POST Firearm certification for Level 3 students is not required.

B. Students shall adhere to all standards, rules and regulations established by the accredited training center. Certification will not be awarded to students who are physically unable to complete every aspect of the basic training course. A student may not be certified for successful completion if:

1. the student's excused absences exceed 10 percent of the total hours of instruction;

2. the student fails to achieve a passing grade of 70 percent or higher on each block of instruction;

3. the student fails to achieve a grade of 80 percent or higher on the requirements for firearm certification;

4. all aspects of the training course have not been successfully completed.

C. Students shall be required to pass the POST statewide written examination for peace officers as prescribed by state law. Seventy percent shall constitute a passing score. In the event a student fails the examination, one retest may be administered if the agency head so desires. The student must wait a minimum of fifteen working days before the retest can be administered with a maximum time limit of thirty working days. If said student fails the retest, the student shall be required to complete another basic training course and satisfy all POST requirements to obtain certification. Oral testing on the statewide examination is prohibited.

D. To maintain firearm certification, an officer shall be required to requalify yearly on the POST firearms qualification course, demonstrating at least 80 percent proficiency. Scores shall be computed and verified by a firearms instructor certified by the POST Council. If the period between qualifying exceeds 18 months for any reason, the officer will be required to complete a basic firearms course at an accredited training center, unless the officer had been in the military for more than three years and was exercising his veteran reemployment rights.

E. When a basic student injures themselves during a basic training course, the student must have the nature of the injury immediately documented. Should the injury later prevent the student from being tested on a basic training course requirement, then upon written request of the agency head, the student will have eight weeks from the time of the medical release to take and pass those course requirements, unless the time between the academy graduation and medical release exceeds a one year period. In that case, the student will be required to complete another basic training course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:663 (April 1999).

§4705. Registration of Officers

A. Registration may be granted in lieu of certification to those officers who were hired prior to January 1, 1986, who did not attend POST-certified basic training.

B. Officers hired prior to January 1, 1986, may be eligible to receive POST registration by completing the following requirements.

1. A letter from the agency head shall be submitted to the POST Council indicating a desire to have the officer registered with the state;

2. Documentation shall accompany the letter regarding initial employment date and continuous law enforcement service on a form prescribed by POST.

3. POST registration shall not apply to reserve/auxiliary officers.

4. Registration is granted in lieu of certification to full-time officers, and shall not apply to reserve or part time officers. POST certification is only granted to those individuals who successfully meet all requirements of POST: a. completion of a basic training course, examination, etc.;

b. registration simply means that the full-time officer is *registered* with POST and he/she is not required to comply with the mandates for basic POST certification;

c. they are exempt from basic training course (i.e., *grandfathered in*), but must comply with all other POST mandates to maintain grandfathership;

d. grandfathership/registration shall become invalid if officer experiences a three-year break in full-time law enforcement service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:663 (April 1999).

§4707. Out-of-State Transfers

A. Out-of-state-transfers shall be eligible for certification by meeting the following criteria at an accredited training center:

1. present a currently valid out-of-state POST certificate. Training applicants transferring from out-of-state who are not certified will not be recognized by POST;

2. must be a full-time employed peace officer and not a part-time, reserve, or auxiliary officer;

3. successfully complete "Legal Aspects" Section of the *Louisiana Law Enforcement Basic Training Manual*, (40 minimum hours);

4. successfully complete "Firearms" Section of the *Louisiana Law Enforcement Training Manual*, (40 minimum hours);

5. pass the statewide examination for peace officers with a minimum score of 70 percent; if failed, the student must complete a full basic training course.

B. Out-of-state transfers with less than a 320 hour basic training course are required to complete an entire POST basic training course.

C. Out-of-state transfers who have attended "pre-service" training in another state shall be required to meet the same POST requirements as basic recruit officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April 1999).

§4709. Interruption of Full-Time Service

A. Any peace officer hired prior to January 1, 1986 who interrupts his full-time law enforcement service for a period in excess of three years and is thereafter rehired, shall be required to meet the basic training requirements for new peace officers. However, if such officer has already completed a POST certified basic training course, he shall be required to complete the Legal Aspects and firearms portion of the course, qualify on the POST firearms qualification course, and pass the statewide examination, all at an accredited training center. Proof of basic training will be required. If the student fails the statewide examination, the student must complete a full basic training course.

B. Any officer hired after January, 1986 who interrupts his full-time law enforcement service for a period in excess of three years and is thereafter rehired, shall be required to meet the requirements outlined in §4709.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April 1999).

§4715. Instructor Qualifications

A. Full-time academy instructors must meet the following minimum qualifications:

1. shall possess at least 60 semester hours college or may substitute practical experience in law enforcement and/or corrections as listed in A.2;

2. each two years full-time experience may be substituted for each 30 semester hours of college. Any combination of above will be acceptable;

3. shall have completed the instructor development course conducted by the Federal Bureau of Investigation. If the course is not available within Louisiana within one year, POST may waive this requirement until such time as a course becomes available;

4. shall have completed at least two years full-time practical experience in law enforcement and/or corrections field, which must be over and above any experience used as a substitute for college.

B. Specialized instructors for defensive tactics, firearms, and corrections shall meet the following qualifications:

1. shall be a full-time employee of a public criminal justice agency with at least two years full-time continuous, practical law enforcement experience, and pertain to firearms, defensive tactics, and corrections instructors;

2. shall have recommendation of an academy director or agency head;

3. shall successfully complete all aspects of specialized instructor school as presented by POST and the Federal Bureau of Investigation (FBI) (except for Defensive Tactics Instructors);

4. shall attend POST-sponsored instructor retrainers as required by POST.

C. Special guest instructors shall meet the following qualifications:

1. shall have advanced knowledge or expertise in the area in which they are instructing;

2. shall not certify students in defensive tactics, firearms or corrections fields.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April 1999).

§4721. Firearms Qualification

A. Pre-Academy Firearms Training

1. Any person employed or commissioned as a peace officer, or reserve or part-time peace officer must successfully

complete a pre-academy firearms training program as prescribed by the council within 30 days from the date of initial employment if that person will be performing the duties of a peace officer before attending a basic law enforcement training course.

B. Pre-Academy and Basic Firearms Qualification

1. Students shall qualify with an approved service weapon on the POST-approved Firearms Qualification Course and all scoring will be computed and recorded by a firearms instructor certified by the POST Council.

a. During a pre-academy training program, a student who fails may be given retests. Any person who fails shall be prohibited from exercising the authority of a peace officer until they have successfully completed the course. However, such persons shall not be prohibited from performing administrative duties.

b. During a basic law enforcement training course, it shall be left to the discretion of the training center director whether a student who fails to qualify on the POST Qualification Course will be given retests. However, if retests are given, the scores will be averaged in accordance with POST regulations and must be completed before the academy class graduates.

2. On a twenty-five (25) yard range equipped with POST-approved P-1 targets, the student, given a pistol or revolver, holster and 240 rounds of ammunition, will fire the POST firearms qualification at least four (4) times. Scores must be averaged and the student must:

- a. fire all courses in the required stage time;
- b. use the correct body position for each course of fire;
- c. fire the entire course using double action only, except in the case of single action only semi-automatic pistols;
- d. fire no more than the specified number of rounds per stage;
- e. fire each course at a distance no appreciably less nor greater than that specified.
- f. achieve an average score of not less than 96 out of a possible 120 which is 80 percent or above. The score shall be computed as follows: $\text{Score 1} + \text{Score 2} + \text{Score 3} + \text{Score 4} = \text{Qualifying Score (divided by) the number of attempts.}$
- g. all stages of fire must be fired in the manner specified.

3. All targets will be graded and final scores computed by a POST-certified Firearms Instructor.

C. Annual Requalification

1. The POST firearms requirements for annual requalification are the same as for basic qualification with one exception. If the POST Fire-arms qualification course must be fired more than once, the scores shall be averaged as designated in basic firearms qualification.

2. All targets will be graded and final scores computed by a POST-certified Firearms Instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:343 (August 1987), amended LR 25:664 (April 1999).

§4723. POST Firearms Qualification Course

A. Stage One

1. At the 25-yard line, the student will fire six rounds strong hand barricade standing, six rounds, strong hand, barricade kneeling, and six rounds, strong hand or off hand barricade, standing, offside, barricade in ninety seconds. Movement to the barricade is required to a maximum distance of 5 yards.

B. Stage Two

1. At the seven-yard line, the student will fire 12 rounds, standing in 25 seconds, with mandatory reloading for all weapons after first six rounds; 6 rounds kneeling in 10 seconds, and 6 rounds off-hand only in 8 seconds.

C. Stage Three

1. At the four-yard line, student will fire three rounds, one-or two-hands, instinct shooting position from holster, in three seconds, and three rounds, one-or two hands, instinct shooting position from ready-gun position, in three seconds. This is repeated once.

D. Stage Four

1. At the two-yard line, one or two hands close quarter shooting position from holster, the student will fire two rounds in two seconds. This is repeated twice. During the shooting, the student is required to move one step to the rear. E. The entire POST firearms qualification course is fired with a hot line, meaning the officer shall automatically reload as soon as his weapon is empty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:665 (April 1999).

§4731. Revocation of Certification

A. All law enforcement agencies and correctional agencies and institutions within the State of Louisiana shall immediately report the conviction of any POST certified full-time, reserve, or part-time peace officer to the council.

B. Any offense which results in the individual peace officer's restriction of his/her constitutional right to bear arms shall be grounds for immediate revocation. The revocation of any certification is effective immediately when the council receives a certified copy of a court's judgment and issues notice to the peace officer. Notice of the revocation shall be sent via certified US mail to the peace officer and the officer's employing agency.

C. All criminal convictions involving a peace officer shall be directed to the council's attention for potential revocation hearings. The council shall review each criminal conviction and conduct hearings on each reported conviction.

D. The chairman of the council shall designate a revocation committee to review potential peace officer revocations and report any findings to the next council meeting. The revocation committee shall consist of:

1. a police chief;
2. a sheriff;
3. a district attorney;
4. the Superintendent of State Police; and
5. the Attorney General or his designee.

E. Any hearings conducted by the council or the revocation committee shall be conducted according to guidelines established by the council.

F. Any peace officer whose certification has been revoked by the Council may file an appeal under the provisions of the Administrative Procedure Act under R.S. 49:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, amended LR 25:665 (April 1999).

§4741. Training Centers

A. Each training center will be subject to a comprehensive performance review by the council once every four years.

B. Each training center will be monitored at least annually to ensure compliance with the council's training standards. C

Each training center shall transmit to the POST Council a schedule of POST certifiable training being conducted. The training schedule shall be submitted no later than the Friday preceding the date on which the training is to be conducted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, amended LR 25:666 (April 1999).

Michael A. Ranatza
Executive Director

9904#059

RULE

Office of the Governor Office of Elderly Affairs

FY 1998-99 State Plan on Aging
(LAC 4:VII.1307)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Governor's Office of Elderly Affairs (GOEA) hereby amends LAC 4:VII.1307, the FY 1998-1999 Louisiana State Plan on Aging. This rule change is in accordance with the *Code of Federal Regulation*, 45 CFR 1321.19 "Amendments to the State Plan." The purpose of this rule change is to change LAC 4:VII.1307.E.1.g, Special Provisions, from "The state Long Term Care Ombudsman Program will be supplemented with Title III-B funds and disbursement of funds to local entities will follow the same method of allocation used since FY 1990" to "The state Long Term Care Ombudsman Program will disburse program funds in an equitable manner", becoming effective April 20, 1999.

The FY 1998-1999 Louisiana State Plan on Aging was adopted and published by reference in the September 20, 1997 issue of the *Louisiana Register*, Volume 23, Number 9. The full text of the State Plan may be obtained by contacting the GOEA at the address below or the Office of the State Register at 1051 North Third Street, Room 512, Baton Rouge, LA 70802, telephone (504) 342-5015.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 13. State Plan on Aging

§1307. Special Provision

A. - E.1.f. ...

g. The state Long Term Care Ombudsman Program will disburse program funds in an equitable manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:932(8)

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Elderly Affairs, LR 19:1307 (October 1993), repealed and promulgated LR 23:1146 (September 1997), amended LR 25:666 (April 1999).

Paul F. "Pete" Arceneaux, Jr.
Executive Director

9904#060

RULE

Department of Health and Hospitals Office of the Secretary

Memorandum of Understanding
Between the Department of Health and Hospitals and
the Capital Area Human Services District FY 98/99
(LAC 48:I.Chapter 27)

In accordance with R.S. 46:2661 et seq., as enacted by Act 54 of the first Extraordinary Session of the 1996 Legislature, the Department of Health and Hospitals, Office of the Secretary hereby adopts the following rule.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 1. General

Chapter 27. Memorandum of Understanding Between the Department of Health and Hospitals and the Capital Area Human Services District

§2701. Introduction

This agreement is entered into by and between Department of Health and Hospitals, hereinafter referred to as DHH, and Capital Area Human Services District, hereinafter referred to as CAHSD, in compliance with LA RS 46:2661 through 46:2666 as well as any subsequent legislation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:948 (May 1998), amended LR 25:666 (April 1999).

§2703. Purpose and General Agreement

A. The Department of Health and Hospitals is authorized by law to provide for the direction, operation, development and management of programs of community-based mental health, mental retardation/developmental disabilities, alcohol and substance abuse, public health and related activities for eligible consumers in Louisiana.

B. The legislation authorizes CAHSD to provide services of community-based mental health, developmental disabilities, alcohol and substance abuse, public health and related activities for eligible consumers in the CAHSD, which includes East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Pointe Coupee parishes; and to assure that services meet all relevant federal and state regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:948 (May 1998), amended LR 25:666 (April 1999).

§2705. Designation of Liaisons

A. The primary liaison persons under this agreement are:

1.	DHH	Deputy Secretary
2.	CAHSD	Executive Director

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:949 (May 1998), amended LR 25:667 (April 1999).

§2709. Services To Be Delivered

A. In order to provide a broad spectrum of coordinated public services to consumers of OMH, OCDD, OADA, OPH and for the District Administration, the CAHSD will assume programmatic, administrative and fiscal responsibilities for including, but not limited to, the following:

1. OCDD Community Support;
2. Mental Health Services consistent with the State Mental Health Plan, as required under the annual Mental Health Block Grant Plan;
3. Outpatient Treatment (Non-Intensive) OADA;
4. Community Based Residential Services OADA;
5. Intensive Outpatient Treatment/Day Treatment OADA;
6. Non-Medical/Social Detoxification OADA;
7. Primary Prevention;
8. Healthy Community Regional Program OPH;
9. HIV/AIDS Prevention Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:949 (May 1998), amended LR 25:667 (April 1999).

§2711. Responsibilities of Each Party

A. CAHSD accepts the following responsibilities:

1. to perform the functions which provide community-based services and continuity of care for the diagnosis, prevention, detection, treatment, rehabilitation and follow-up care of mental and emotional illness.
2. to be responsible for community-based programs and functions relating to the care, diagnosis, eligibility determination, training, treatment, case management of developmentally disabled and autistic persons as defined by the MRDD law.

3. the CAHSD shall work closely with the OCDD in managing the waiver functions, including placement of individuals and maintenance of the waiting list;

4. to promote, support and provide community based planning of broad health issues through the Healthy Communities Strategic Planning model;

5. the CAHSD will provide for the gradual assumption of appropriate community public health functions;

6. to perform community-based functions related to the care, diagnosis, training, treatment, and education of alcohol or drug abusers and primary prevention of alcohol and drug abuse;

7. to perform community-based functions related to the care, diagnosis, training, treatment and education of gambling abuse;

8. to maintain services in community-based mental health, developmental disabilities, and substance abuse at least at the same level as the state maintains similar programs;

9. to ensure that the quality of services delivered is equal to or higher than the quality of services previously delivered by the state;

10. to perform human resources functions necessary for the operation of the CAHSD;

11. to be responsible for the provision of any function/service, reporting or monitoring, mandated by the Block Grant Plan of each respective program office;

12. provide systems management and services data/reports in a format and content as that required of all regions by each DHH program office. Specific content of required information sets will be negotiated and issued annually through program office directives;

13. utilize ARAMIS, MIS, SPOE and any other required DHH/program office systems to meet state and federal reporting requirements;

14. human resource staffing data will be available for on-site review;

15. maintain and support Single Point of Entry (SPOE) state standard;

16. provide for successful delivery of services to persons discharged from state facilities into the CAHSD service area by collaborative discharge planning;

17. provide in-kind or hard match resources as required for acceptance of federal grant or entitlement funds utilized for services in the CAHSD as appropriately and collaboratively applied for;

18. Make available a list of all social and professional services available to children and adults through contractual agreement with local providers.

19. CAHSD will work with Office of Alcohol and Drug Abuse to assure that all requirements and set asides of the Substance Abuse Block Grant are adhered to in the delivery of services;

20. The CAHSD shall develop and utilize a five year strategic plan as required by Act 1465;

21. The CAHSD will provide HIV/AIDS Prevention Program services.

B. DHH retains/accepts the following responsibilities:

1. operation and management of any in-patient facility under jurisdiction of the DHH except that the CAHSD shall have authority and responsibility for determination of eligibility for receipt of such inpatient services (single point of entry function) which were determined at the regional level prior to the initiation of this Agreement .
2. operation, management and performance of functions and services for environmental health;
3. operation, management and performance of functions related to the Louisiana Vital Records Registry and the collection of vital statistics;
4. operation, management and performance of functions and services related to laboratory analysis in the area of personal and environmental health;
5. operation, management and performance of functions and services related to education provided by or authorized by any state or local educational agency;
6. monitoring this service agreement, assuring corrective action through coordination with CAHSD and reporting failures to comply to the Governor's office;
7. operation, management and performance of functions for pre-admission screening and resident review process for Nursing Home Reform;
8. operation, management and performance of functions for enrollment and monitoring of Medicaid targeted case management;
9. DHH, each quarter, will share with CAHSD information regarding, but not limited to, program data, statistical data, and planning documents that pertain to the CAHSD;
10. DHH retains all Prior Authorization functions for Mental Health Medicaid Services;
11. DHH shall be responsible for transferring \$30,000 to CAHSD for the purposes of contract attorney services. DHH will provide legal support and representation in judicial commitments to the Department.

C. Joint Responsibilities:

1. to determine if community-based mental health, developmental disabilities, substance abuse, and public health services are delivered at least at the same level by CAHSD as the State provides for similar programs in other areas. Performance indicators shall be established. Such indicators will measure extensiveness of services, accessibility of services, availability of services and, most important, quality of services and/or outcome measures. The CAHSD will not be required to meet performance indicators which are not mandated for state-operated programs in these service areas, and which were not previously collected by Region 2.
2. CAHSD's progress toward achieving outcomes which meet or exceed those realized by DHH-operated programs in the affected geographic region shall be measured by comparing the CAHSD data on results to baseline statistics reported by Regional DHH programs for the year prior to July 1, 1997. Specific outcome measurements/performance indicators to be compared will be jointly agreed upon by CAHSD and DHH;
3. the CAHSD shall work closely with the OCDD in transitioning individuals from Pinecrest and Hammond

Developmental Centers to the district ensuring individualized planning, the implementation of chosen life activities and needed supports, and the development of circles of support for the individual to ensure relationship building and community participation;

4. CAHSD will work with the Office of Alcohol and Drug Abuse to assure the key performance indicators are the same for CAHSD and Office of Alcohol and Drug Abuse;

5. CAHSD will work with the Office of Alcohol and Drug Abuse to assure there is a clear audit trail for linking alcohol and drug abuse funding and staffing to alcohol and drug abuse services;

6. CAHSD and Region II, OPH managers will collaborate to perform community based functions which provide services and continuity of care for education, prevention, detection, treatment, rehabilitation and follow up care related to personal and community health.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:949 (May 1998), LR 25:667 (April 1999).

§2713. Reallocation of Resources/Staff and Financial Agreements

A. For FY 98-99, DHH agrees to transfer financial resources to the direction and management of the CAHSD.

B. The CAHSD will submit to DHH an annual budget request for funding of the cost for providing the services and programs for which the CAHSD is responsible . The format for such request shall be consistent with that required by the Division of Administration and DHH. The request shall conform with the time frame established by DHH. CAHSD Executive Director will meet with the Office of the Secretary to discuss all new and expanded program request prior to presentation to DOA.

C. The CAHSD shall operate within its budget allocation and for services required by this MOU, report budget expenditures to DHH.

D. Revisions of the budget may be made upon written consent between the CAHSD and DHH and, as appropriate, through the Legislative Budget Committee's BA-7 process. In the event any additional funding is appropriated and received by DHH that affects any budget categories for the direction, operation, and management of the programs of mental health, mental retardation/developmental disabilities, substance abuse services, and public health, and related activities for any other such DHH entities or regions, the CAHSD will receive additional funds on the same basis as other program offices.

E. In the event of a budget reduction, CAHSD will receive a proportionate reduction in its budget.

F. The CAHSD shall assume all financial assets and/or liabilities associated with the programs transferred.

G. CAHSD shall be responsible for repayment of any funds received which are determined ineligible and subsequently disallowed.

H. DHH agrees to maintain the level of support from the Office of the Secretary and from the Office of Management and Finance which is consistent with the current level of

support now provided to the regional OCDD, OMH, and OADA and OPH offices. These supports include:

1. Communication and Inquiry;
2. Internal Audit;
3. Environmental Consultant;
4. Fiscal Management;
5. Information Services;
6. Facility Management;
7. Budget, Contract and Lease Management;
8. Research and Development;
9. Materials Management;
10. Appeals, Human Rights, and Staff Development/Training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:950 (May 1998), amended LR 25:668 (April 1999).

§2715. Joint Training and Meetings

CAHSD, through its staff, will participate in DHH and other programmatic training, meetings and other activities as agreed upon by CAHSD and DHH. In a reciprocal manner, CAHSD will provide meetings, training sessions, and other activities that will be available for participation by DHH staff as mutually agreed upon by the CAHSD and the DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:950 (May 1998), amended LR 25:669 (April 1999).

§2717. Special Provisions

A. The CAHSD agrees to abide by all applicable Federal, State, and Parish law regarding nondiscrimination in service delivery and/or employment of individuals because of race, color, religion, sex, age, national origin, handicap, political beliefs, disabled veteran, veteran status, or any other non-merit factor.

B. The CAHSD shall maintain a property control system of all movable property in the possession of the CAHSD that was formally under the control of DHH, and of all additional property acquired.

C. For purposes of purchasing, travel reimbursement, and securing of social service/professional contracts, the CAHSD shall utilize established written bid/RFP policies and procedures. Such policies and procedures shall be developed in adherence to applicable statutory and administrative requirements. The CAHSD shall provide informational copies of such policies and procedures to DHH as requested until CAHSD develops their own policies and procedures they will use the current DHH policies.

D. The CAHSD shall abide by all court rulings and orders that affect DHH and impact entities under the CAHSD's control, and shall make reports to DHH Bureau of Protective Services all applicable cases of alleged abuse, neglect, exploitation, or extortion of individuals in need of protection in a format prescribed by DHH.

E. CAHSD shall be responsible for providing services to citizens of East & West Feliciana Parishes at a level at least equal to services rendered by DHH Region II prior to July 1,

1997. This will also include any new services provided and funded by CAHSD through DHH subsequent to July 1997.

F. If OADA is successful in establishing an Inpatient Gambling program, this will not be managed by CAHSD since this is a statewide program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:951 (May 1998), amended LR 25:669 (April 1999).

§2719. Renewal/Termination

A. This agreement will cover the period of time from July 1, 1998 to June 30, 1999.

B. This agreement will be revised on an annual basis, as required by law, and will be promulgated through the Administrative Procedure Act. The annual agreement shall be published in the state register each year in order for significant changes to be considered in the budget process for the ensuing fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2661.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 24:948 (May 1998), amended LR 25:669 (April 1999).

David W. Hood
Secretary

9904#043

RULE

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

CommunityCARE Emergency Services

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

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 4704 of the Balanced Budget Act of 1997 concerning provision of emergency medical services to Medicaid recipients enrolled in the Medicaid program known as the CommunityCARE Program.

Emergency medical services with respect to a CommunityCARE enrollee are defined as furnished by a provider that is qualified to provide such services under Medicaid and consist of covered inpatient and outpatient services that are needed to evaluate or stabilize an emergency medical condition. The CommunityCARE enrollees who present themselves for emergency medical services shall receive an appropriate medical screening to determine if an emergency medical condition exists. A triage protocol is not

sufficient to be an appropriate medical screening. If the medical screening does not indicate an emergency medical condition exists, the treating hospital/physician shall refer the CommunityCARE enrollee back to his/her primary care physician for treatment.

David W. Hood
Secretary

9904#045

RULE

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

Emergency Medical Services—Ambulance Certification

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

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes the following list of medical and safety equipment as requirements for certification of all ambulances operating within the State of Louisiana.

I. All ambulances must have a National Standard Public Safety two-way radio communication (day-to-day communications). The ambulance dispatch center(s) and/or point(s) of dispatch must be capable of interactive two-way communications within all of the service’s defined area:

A. All dispatch center(s) and/or point(s) of dispatch shall have a proper FCC licensed radio system or an agreement with an FCC licensed communication provider that does not allow for transmission by unauthorized users, but will provide the capability for the dispatcher, with one transmission, to be heard simultaneously by all of its ambulances/emergency medical response vehicles within that defined geographic service area.

B. Services that utilize multiple transmitters/tower sites shall have simultaneous communications capabilities with all units utilizing a specific transmitter/tower site.

C. Two-way radio with disaster communications must be either:

a. VHF—Hospital Emergency Activation Radio (HEAR) system 155.340 Mhz with carrier squelsh, ENCODER optional; or

b. 800 Mhz Trunking—SmartNet or Smart Zone—using the ICALL or ITAC frequencies.

D. Direct communication with a physician and hospital must be conducted through:

HEAR; or cellular telephone; or Radio Telephone Switch Station (RTSS); or Med. System 10, etc.

II. All ambulances must carry the following basic medical supplies and equipment:

Two suction units - one must generate 300 mm Hg and one must be portable	1 each
Appropriate refill canister/liners for suction unit (if required)	2
Suction tubing, wide bore	2
Rigid pharyngeal/tonsillar wide bore suction	2
Suction catheters 5, or 6, or 5/6 and 14 French	2 each
Fixed oxygen system with variable flow regulator and humidifier - minimum 500 PSI	1
Portable oxygen cylinder - full 2000 + psi size “D” or above	2
Variable flow regulator and an oxygen wrench	1
Adult non-rebreather oxygen masks with tubing	4
Pediatric non-rebreather oxygen masks with tubing	4
Nasal prongs, “nasal cannulas”, adult with O ₂ tubing	4
CPR mask or barrier device, with one-way valve or filter	1
Adult bag valve mask devices with oxygen reservoirs and tubing	2 each
Pediatric bag valve mask devices with oxygen reservoirs and tubing, approximately 450 cc. Note: Recommend no pop-off valve or making the valve inoperable	2
Oral airways - adult, child, and infant	2 each
Cervical collars- extra small/small or equivalent, medium/large or equivalent	2 each 4 each
Cervical immobilization device - head blocks, other commercial head immobilization device or firm padding to improvise such a device such as towels or blankets that are not used to fulfill any other requirement	2 sets
Traction splint with ankle hitch, adult	1
Extremity splint - upper and lower	2 each
Short spinal immobilization device with appropriate straps and pillows	2
Long spinal immobilization device with at least three points of confinement - not including the head immobilization device, one of which must be a scoop stretcher with at least three straps or other clamshell device Note: Wood acceptable if impervious to body fluids. Disposable cardboard not acceptable	3
Clean burn sheets, individually wrapped	2
Triangular bandages	8
Sterile multi-trauma dressings, 10" x 30"	2

Sterile combine dressings, minimum 5" x 9"	10
Sterile 4" x 4" gauze pads	25 packs minimum 2 per pack
Sterile individually packed occlusive dressings, 3" x 3" or larger	4
Roller gauze, clean, at least 2 inches wide	10 rolls
Cold packs	4
Sterile water - 500 cc plastic container	1
Normal saline - plastic containers	2 liters
Oral Glucose - based Paste (cake icing acceptable)	Min. 12.5g
Medical adhesive tape, 1" and 2" or wider (paper tape not acceptable)	6 each
OB kit: 2 towels, a 4" x 4" dressing, umbilical tape, sterile cutting instrument, a bulb suction, clamps for the cord, sterile gloves, and blanket	2
Blood pressure cuff, adult and pediatric, multi-cuff kits are acceptable	1 each
Stethoscope	1
Emergency Medical Technician - Shears, assigned to vehicle or crew members	1 pair
Clean, single use bite sticks	2
Flashlights - two "C" size battery minimum	2
Blankets	2
Sheets, linen or paper	4
Fire extinguisher - 10 B:C, 1 in patient compartment, and 1 accessible from driver cab. Note: no Halon	2
Triage Tags	25
Current hazardous material reference guide (U.S. Department of Transportation or equivalent)	1
Reflective triangles a set that consists of 3 or more triangles	1 set

III. All ambulances must carry the following infection control supplies and equipment:

Full peripheral glasses, and face masks, surgical; or face shields for splash protection	2 4 4
Gloves, nonsterile	1 box
Handwash, commercial antimicrobial	1 bottle or can or 12 towelettes
Sharps container, OSHA approved, one quart or larger	1

Readily identifiable trash bags, labeled for contaminated wastes	2
Jumpsuit/gown, impervious to liquid, disposable	1 per crew member
Shoe covers, disposable	1 pair per crew member
Tuberculosis mask, OSHA approved	1 per crew member

IV. All ambulances must be equipped with the following:

Hard hat and safety goggles (ANSI Z 37.1); or NFPA-approved fire helmet with face shield may be substituted for the hard hat and safety goggles	1 per crew member
Gloves, leather or Nomex, over-wrist	1 pair per crew member

V. The following must be carried by all intermediate and paramedic level ambulances:

All IV fluids must be in plastic bags or bottle, not glass bottles, unless medically indicated otherwise.

Dextrose 5 percent in water or .9 percent NAACL in 250 ml bags	2 bags
Normal saline or Lactate Ringers contained in not less than 4 approved containers	4000 cc in not less than 4 approved containers
Normal saline - 500 cc minimum over and above irrigation	2000 cc
Macro drip administration sets	4
Minidrip administration sets	4
Venous tourniquets	2
IV Roof hook or pole	1
IV Catheters - 22, 20, 18, 16 and 14 gauge	4 each
Y-type blood infusion set with in line filter	1
Antiseptic solution pads	10
Arm boards -various sizes	3
3-way stop cock	1
Extension tubing	2
Syringe with luer-lock -30 cc minimum	2
Sharps container OSHA approved, suitable for sharps disposal at patient's side	1

VI. The following must be carried by all paramedic level ambulances:

Intra osseous needles of choice	2
1 cc syringe with 1/10 cc graduates	2
3 to 6 cc syringe	2
10 to 12 cc syringe	2
Hypodermic needles, 18 to 20 Ga.	2
Hypodermic needles, 21 to 23 Ga.	2
Hypodermic needles, 25 to 27 Ga.	2
Laryngoscope handle with 1 set extra batteries and bulb or 2 disposable handle units	1
Laryngoscope blade, Size 0 straight or 2 each disposable	1
Laryngoscope blade, Size 1 straight or 2 each disposable	1
Laryngoscope blade, Size 2 straight or 2 each disposable	1
Laryngoscope blade, Size 3 straight or curved or 2 each disposable	1
Laryngoscope blade, Size 4 straight or curved or 2 each disposable	1
Endotracheal tubes, uncuffed, size 3.0 or 3.5	2
Endotracheal tubes, uncuffed, size 4.0 or 4.5	2
Endotracheal tubes, uncuffed, size 5.0 or 5.5	2
Endotracheal tubes, cuffed, size 6.0 or 6.5	2
Endotracheal tubes, cuffed, size 7.0 or 7.5	2
Endotracheal tubes, cuffed, size 8.0 or 8.5	2
Stylettes for ET tubes, adult and pediatric	2 each
Magill forceps, adult and pediatric	1 each
Water soluble lubricating jelly non-cellulose containing - 5 packs or 1 tube	1
Cardiac monitor/defibrillator with paper recorder, defibrillator pads or gel, quick look paddles or hands off capability, chest attachment cable and pads, capable of min.5 to 360 joules. An automatic external defibrillator may be used if it has manual override capability and all other features listed.	1
Pediatric drug dosing chart or tape to include all mandated drugs	1
Home use glucometer - FDA approved	1
*Nastrogastric tube (when use allowed) 5 Fr.	1
*Nastrogastric tube (when use allowed) 8 Fr.	1
*Nastrogastric tube (when use allowed)14 to 18 Fr.	1
DRUGS	

Adenosine 6 mg	3
Albuterol inhalation solution (2.5 mg) with appropriate delivery device	1
Aspirin 325 mg (5 grains)	1
Atropine	3 mg
Benadryl (50 mg for IV use)	1
Bretylium tosylate, 500 mg	3
Calcium chloride, 10 percent	1 g
Diazepam	10 mg injectable
Dopamine (200 mg minimum vials)	400 mg
Dextrose, 25g in 50 cc	2
Epinephrine, 1:1,000 (minimum 2 mg) and Epinephrine 1:10,000 (minimum 2 mg)	12 mg min. Total
Lidocaine, 1g vial or premixed 4 mg/cc	1g
Lidocaine, 100 mg boluses	4
Loop diuretic (e.g., furosemide 80 mg or bumetanide 2 mg)	1 dose
Naloxone	4 mg
NTG spray or tablets	3 doses
Magnesium sulfate, 1 gram	1 g
Sodium bicarbonate, 44 meq minimum	2
Verapamil, 10 mg	1

David W. Hood
Secretary

9904#031

RULE

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

Emergency Medical Services—Emergency Medical Response Vehicles Certification (Sprint Vehicles)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule under the Medical Assistance Program as authorized by R.S. 32:1 et seq. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions to establish certification requirements for all emergency medical response vehicles.

An *emergency medical response vehicle* is defined as a marked emergency vehicle with full visual and audible warning

signals operated by a certified ambulance service; the primary purpose of which is to respond to the scene of a medical emergency to provide emergency medical stabilization or support, or command control and communication, but which is not an ambulance designed or intended for the purpose of transporting a victim from the scene to a medical facility regardless of its designation. Included, but not limited to are such vehicles designated as “sprint car”, “quick response vehicle”, “special response vehicle”, “triage trucks”, “supervisor units”, and other similar designations. Fire apparatus and law enforcement patrol vehicles that carry first aid or emergency medical supplies and respond to medical emergencies as part of their routine duties shall not be considered emergency medical response vehicles.

A. Qualifications of Vehicle. The vehicle may be on either an automobile or truck chassis, have four or more wheels and must have the following:

1. Emergency Warning Lights. These lights shall be mounted as high and as widely spaced laterally apart as practicable. There must be two alternating flashing red lights on the front of the vehicle mounted at the same level. There must be two alternating flashing red lights on the rear of the vehicle mounted at the same level. These front and rear lights shall have sufficient intensity to be visible at five hundred feet in normal sunlight. Exceptions:

a. Any authorized emergency vehicle may be equipped with a large revolving red light on the roof instead of alternating flashing red lights on the front. This light must be discernible in all directions and have sufficient intensity to be visible at five hundred feet in normal sunlight.

b. Authorized emergency medical response vehicles of organized fire companies may be equipped with a large red and white light on the roof encased in a clear dome, instead of the large red light on the roof. This light must be discernible in all directions and have sufficient intensity to be visible at five hundred feet in normal sunlight.

2. Audible Warning Signals. Each emergency medical response vehicle must have a siren, exhaust whistle, or bell capable of giving an audible signal sufficient to warn motorists of its approach (audible up to five hundred feet).

3. External markings:

a. All numbering and lettering shall be reflective.

b. The unit number shall be displayed in numerals three (3) inches high or greater on the rear and both sides of the vehicle.

c. The agency’s name shall appear on both sides of the vehicle in lettering 3 inches high or greater, or with a logo that is 6 inches or greater in size.

d. The agency’s name or logo shall appear on the trunk or rear door in lettering 3 inches high. Agency logos must be specific to the agency and on file with the Department of Health and Hospitals.

e. The vehicle’s markings shall indicate its designation as an emergency medical response vehicle such as “Sprint Car, Supervisor, Chief, Special Services”, etc. No markings on the vehicle may imply that it is an ambulance.

B. Equipment and Supplies

1. All vehicle units must have a Federal Communication Commission (FCC) typed acceptable two way radio communication system (day-to-day communications). The emergency medical response vehicle dispatch center(s) and/or

point(s) of dispatch must be capable of interactive two-way radio communications within all of the service’s defined area:

a. All dispatch center(s) and/or point(s) of dispatch shall have a proper FCC licensed radio system or an agreement with an FCC licensed communication provider that does not allow for transmission by unauthorized users, but will provide the capability for the dispatcher, with one transmission, to be heard simultaneously by all of its ambulances/emergency medical response units within that defined geographic service area.

b. Services that utilize multiple transmitters/tower sites shall have simultaneous communications capabilities with all units utilizing a specific transmitter/tower site.

c. In addition to the day-to-day communication system a two way radio with disaster communications capability which must be either:

i. VHF Band - Hospital Emergency Activation Radio (HEAR) system 155.340 MHz with carrier squelsh, ENCODER optional; or

ii. 800 Mhz Band - SmartNet or Smart Zone - using the ICALL or ITAC frequencies in both the repeater and simplex modes in accordance with the FCC Region 18 Public Safety Radio Communication Plan.

d. Direct communication with a physician and hospital must be conducted through:

i. HEAR; or

ii. wireless telephone; or

iii. Radio Telephone Switch Station (RTSS); or

iv. Med. System 10, etc.

2. All emergency medical response vehicles must be equipped with the following:

Fire Extinguisher with a minimum of Underwriters Laboratory rating of 10:B,C (1) (no Halon). This device should be properly secured in the vehicle	1
Triangle reflectors	1 set of three triangle
Flashlight, 2 “C” cell or larger	1
Current hazardous materials reference guide U.S. Department Of Transportation or equivalent.	1
Hard Hat and Safety goggles (ANSI Z 37.1) or	1 per crew member
National Fire Protection Association approved fire helmet with face shield; and	1 per crew member
Gloves, leather or Nomex, over-wrist	1 pair per crew member

3. All emergency medical response vehicles must have basic life support medical supplies as follows:

Portable suction unit	1
Appropriate refill canister/liners for suction unit (if required)	1
Suction tubing, wide bore (if required)	1
Rigid pharyngeal/tonsillar wide bore suction	1

Suction catheters 5 or 6 or 5/6 and 14 French (if required)	1 each
Portable oxygen cylinder - full, 2000 + psi size "D" or above	1
Variable flow regulator and an oxygen wrench	1
Adult non-rebreather oxygen masks with tubing	1
Pediatric non-rebreather oxygen masks with tubing	1
Nasal prongs "nasal cannulas", adult with O ₂ tubing	1
CPR mask or barrier device with one-way valve or filter	1
Adult bag valve mask devices with oxygen reservoirs and tubing	1 each
Pediatric bag valve mask devices with oxygen reservoirs and tubing, approximately 450 cc.; Note: Recommend no pop-off valve or make the valve inoperable	1
Oral airways - adult, child, and infant	1 each
Cervical collars - extra small/small or equivalent medium/large or equivalent	1 each
Cervical immobilization device - head blocks, other commercial head immobilization device or firm padding to improvise for such a device (such as towels or blankets not used to fulfill any other requirement)	1 set
Extremity splint suitable for upper or lower extremity fracture	1
Long spinal immobilization device may be a scoop stretcher with at least three straps or other clamshell devices Note: Wood acceptable if impervious to body fluids. Disposable cardboard not acceptable	1
Clean burn sheet, individually wrapped	1
Triangular bandages	2
Sterile multi-trauma dressing, 10" x 30"	1
Sterile combine dressings, minimum 5" x 9"	4
Sterile 4" x 4" gauze pads	10 packs minimum 2 per pack
Sterile individually packed occlusive dressings, 3" x 3" or larger	2
Roller gauze, clean, at least 2 inch wide	4 rolls
Normal saline - plastic containers	1 liter
Oral Glucose - based Paste (cake icing acceptable)	Min. 12.5g
Medical adhesive tape, 1" and 2" or wider (paper tape not acceptable)	1 each

OB kit: 2 towels, a 4" x 4" dressing, umbilical tape, sterile cutting instrument, a bulb suction, clamps for the cord, sterile gloves, and a blanket	1
Unopened box aluminum foil or silver swaddler	1
Blood pressure cuff, adult and pediatric, multi-cuff kits are acceptable	1 each
Stethoscope	1 pair
EMT Shears	1
Clean, single use bite stick	1
Blanket	1
Triage Tags	25

4. All emergency medical response vehicles that are not staffed and equipped to the EMT-Paramedic level must carry an automated external defibrillator (either automatic or semi-automatic) with the appropriate lead cables and at least two sets of the appropriate disposable electrodes. If the automated defibrillator is also capable of manual defibrillation, then an appropriate lock out mechanisms (such as an access code, computer chip, or lock and key) to prevent unauthorized use of the device by those persons not authorized to manually defibrillate must be an integral part of the device.

5. All emergency medical response vehicles must carry infection control equipment as follows:

Full Peripheral Glasses (1) or Face Mask, surgical (1 set); or, face shield for splash protection (1)	1
Gloves, Non-sterile	1 box
Handwash, Commercial Antimicrobial	1 bottle or can or 12 towelettes
Sharps container, OSHA approved	1
Readily identifiable trash bags, labeled for contaminated wastes	1
Jumpsuit/gown, impervious to liquid, disposable	1 per crew member
Shoe covers, disposable	1 per crew member
Tuberculosis mask, OSHA approved	1 per crew member

6. The following must be carried by intermediate level and paramedic level emergency medical response vehicles:

All IV fluids must be in plastic bags or jugs, not glass bottles, unless medically indicated otherwise.

Dextrose 5 percent in water - in 250 ml bags or .9 percent NAACL	1 bag
Normal saline or lactated ringer's contained in not less than 4 approved containers	1000 cc in at least 2 approved containers
Macro drip Administration Sets	1
Minidrip Administration Sets	2

Venous Tourniquet	1
IV Catheters - 22, 20, 18, 16, and 14 gauge	1 each
Antiseptic Solution pads	6
3-way stop cock	1
Extension tubing	1
Syringe with Luer-lock 30 cc minimum	1

7. The following must be carried by all paramedic level emergency medical response vehicles:

Intra osseous needles of choice	1
1 cc syringe with 1/10 cc graduates	1
3 to 6 cc syringe	1
10 to 12 cc syringe	1
Hypodermic needle, 18 to 20 Ga.	1
Hypodermic needle, 21 to 23 Ga.	1
Hypodermic needle, 25 to 27 Ga.	1
Laryngoscope handle with 1 set extra batteries and bulb or 1 disposable handle unit	1
Laryngoscope blade, Size 0 Straight or 1 each disposable handle unit	1
Laryngoscope blade, Size 1 Straight or 1 each disposable handle unit	1
Laryngoscope blade, Size 2 Straight or 1 each disposable handle unit	1
Laryngoscope blade, Size 3 Straight or Curved or 1 each disposable handle unit	1
Laryngoscope blade, Size 4 Straight or Curved or 1 each disposable handle unit.	1
Endotracheal tubes, Uncuffed, Size 3.0 or 3.5	1
Endotracheal tubes, Uncuffed, Size 4.0 or 4.5	1
Endotracheal tubes, Uncuffed, Size 5.0 or 5.5	1
Endotracheal tubes, cuffed, Size 6.0 or 6.5	1
Endotracheal tubes, cuffed, Size 7.0 or 7.5	1
Endotracheal tubes, cuffed, Size 8.0 or 8.5	1
Stylettes for ET tubes, adult and pediatric	1 each
Magill Forceps, adult and pediatric	1 each
Water soluble lubricating jelly non-cellulose containing	1 pack of 5 or 1 tube

Cardiac monitor/defibrillator with paper recorder, defib pads or gel, quick look paddles or hands off capability, chest attachment cable and pads, capable of min. 5 to 360 joules. An automatic external defibrillator may be used if it has manual override capability and all other features listed.	1
Pediatric drug dosing chart or tape to include all mandated drugs	1
Home use glucometer (FDA approved)	1
Nasogastric Tube (when use allowed) 5 Fr	1
Nasogastric Tube (when use allowed) 8 Fr	1
Nasogastric Tube (when use allowed) 14 to 18 Fr	1
DRUGS	
Albuterol inhalation solution 2.5 mg with appropriate delivery device	1
Aspirin 325 mg 5 grains	1
Atropine	3 mg
Benadryl 50 mg for IV use	1
Bretylium tosylate, 500 mg	1
Diazepam	10 mg injectable
Dopamine 200 mg minimum Vials	200 mg
Dextrose, 25 g in 50 cc	1
Epinephrine, 1:1,000 minimum 2 mg and Epinephrine 1:10,000 minimum 2 mg	4 mg min.
Lidocaine, 100 mg boluses	3
Loop diuretic e.g. furosemide 80 mg or bumetanide 2 mg	1 dose
Naloxone	2 mg
NTG spray or tablets	3 doses
Sodium bicarbonate, 44 meq min	2

David W. Hood
Secretary

9904#033

RULE

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

Intermediate Care Facilities for the Mentally Retarded—Standards for Payment (LAC 50:II.Chapter 103)

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

following rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq., and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance

Subpart 3. Standards for Payment

Chapter 103. Standards for Payment for Intermediate Care Facilities for the Mentally Retarded (ICF/MR)

Subchapter A. Foreword, Definitions and Acronyms

§10301. Foreword

A. The ICF/MR Standards for Payment specify the requirements of federal and state law and regulations governing services provided by Intermediate Care Facilities for the Mentally Retarded and persons with other Developmental Disabilities (ICF/MR).

B. The Medicaid Program is administered by the Louisiana Department of Health and Hospitals (DHH) in cooperation with other federal and state agencies.

C. Standards are established to ensure minimum compliance under the law, equity among those served, provision of authorized services, and proper disbursement. If there is a conflict between material in these standards and the federal and state laws or policies governing the program, the state laws or policies governing the program have precedence. These standards provide the ICF/MR with information necessary to fulfill the provider enrollment contract with the agency. It is the ICF/MR facility's responsibility to keep these standards current. The standards are the basis for surveys by federal and state agencies, are part of the enrollment contract, and are necessary for the ICF/MR to remain in compliance with federal and state laws.

D. Monitoring of an ICF/MR's compliance with state and federal regulations is the responsibility of DHH's Bureau of Health Services Financing (BHFS).

E. The Bureau of Health Services Financing (BHSF) Health Standards Section (HSS) is responsible for determining an ICF/MR's compliance with state licensing requirements and compliance with specific Title XIX certification requirements which include physical plant, staffing, dietary, pharmaceuticals, active treatment, and other standards. Minimum Licensure Requirements for ICF/MRs are covered in the booklet entitled *Licensing Requirements for Residential Care Providers* and Subpart I of the *Code of Federal Regulations*, Chapter 42:483.400-483.480.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:676 (April 1999).

§10303. Definitions and Acronyms Specific to Mental Retardation and Other Developmental Disabilities

A. Definitions regarding Mental Retardation are adopted from the American Association on Mental Deficiency *Manual*

on Terminology and Classification in Mental Retardation, 1977 Edition.

B. Definitions for Developmental Disabilities are taken from the 1983 amended R.S. 28:330-444 based on Public Law 95-602.

C. All clients must meet the criteria for mental retardation and other developmental disabilities in order to qualify for Title XIX reimbursement for ICF/MR services.

AAMR—American Association of Mental Retardation (formerly the *AAMD*—American Association of Mental Deficiency).

Abuse—the infliction of physical or mental injury to a client or causing a client's deterioration to such an extent that his/her health, moral or emotional well-being is endangered. Examples include, but are not limited to: sexual abuse, exploitation or extortion of funds or other things of value.

Active Treatment—an aggressive and consistent program of specialized and generic training, treatment, health and related services directed toward the acquisition of behaviors necessary for the client to function with as much self determination and independence as possible and the prevention and deceleration of regression or loss of current optimal functional status.

Adaptive Behavior—the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected for his age and cultural group. Since these exceptions vary for different age groups, deficits in adaptive behavior will vary at different ages.

Agency—See *Medicaid Agency*.

Ambulatory—an ability to walk about.

ANSI—American National Standards Institute.

Applicant—an individual whose written application for Medicaid has been submitted to the agency but whose eligibility has not yet been determined.

ART—Accredited Record Technician.

Attending Physician—a physician, currently licensed by the Louisiana State Board of Medical Examiners, designated by the client, family, agency, or responsible party as responsible for the direction of overall medical care of the client.

Autism—a condition characterized by disturbance in the rate of appearance and sequencing of developmental milestones: abnormal responses to sensations, delayed or absent speech and language skills while specific thinking capabilities may be present, and abnormal ways of relating to people and things.

BHSF—Bureau of Health Services Financing. See *Health Services Financing*.

Board Certified Social Worker (BCSW)—a person holding a Master of Social Work (MSW) degree who is licensed by the Louisiana State Board of Certified Social Work Examiners.

Capacity for Independent Living—the ability to maintain a full and varied life in one's own home and community.

Cerebral Palsy—a permanently disabling condition resulting from damage to the developing brain, which may occur before, during or after birth and results in loss or impairment of control over voluntary muscles.

Certification—a determination made by the Department of Health and Hospitals (DHH) that an ICF/MR meets the necessary requirements to participate in Louisiana as a provider of Title XIX (Medicaid) Services.

Change in Ownership (CHOW)—any change in the legal entity responsible for the operation of an ICF/MR.

Chief Executive Officer (CEO)—an individual licensed, currently registered, and engaged in the day to day administration/management of an ICF/MR.

Client—an applicant for or recipient of Title XIX (Medicaid) ICF/MR services.

Code of Federal Regulations (CFR)—the regulations published by the federal government. Section 42 includes regulations for ICF/MRs.

Comprehensive Functional Assessment—identifies the client's need for services and provides specific information about the client's ability to function in different environments, specific skills or lack of skills, and how function can be improved, either through training, environmental adaptations, or provision of adaptive, assistive, supportive, orthotic, or prosthetic equipment.

Developmental Disabilities (DD)—severe, chronic disabilities which are attributable to mental retardation, cerebral palsy, autism, epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation. This condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of mental retardation, and requires treatment or services similar to those required for MR/DD are manifested before the person reaches age 22 and are likely to continue indefinitely.

Developmental Period—a period from birth to before a person reaches age 22.

DHH—Louisiana's Department of Health Hospitals.

DHHS—the federal Department of Health and Human Services in Washington, D.C.

Dual Diagnosis—clients who carry diagnoses of both mental retardation and mental illness.

Enrollment—process of executing a contract with a licensed and certified ICF/MR provider for participation in the Medical Assistance Program. Enrollment includes the execution of the provider agreement and assignment of the provider number used for payment.

Epilepsy—disorder of the central nervous system which is characterized by repeated seizures which are produced by uncontrolled electrical discharges in the brain.

Facility—an Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled.

Fiscal Intermediary—the private fiscal agent with which DHH contracts to operate the Medicaid Management Information System. It processes the Title XIX (Medicaid) claims for services provided under the Medical Assistance Program and issues appropriate payment(s).

General Intellectual Functioning—results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose.

HCFA—Health Care Financing Administration.

Health Services Financing, Bureau of (BHSF)—a division of DHH responsible for administering, overseeing, and monitoring the state's Medicaid Program.

HSS—Health Standards Section within BHSF, the section responsible for licensing, certifying and enrolling ICFs/MR.

I.Q.—Intelligence Quotient.

Individual Habilitation Plan (IHP)—the written ongoing program of services developed for each client by an interdisciplinary team in order for that client to achieve or maintain his/her potential. The plan contains specific, measurable goals, objectives and provides for data collection.

Individual Plan of Care (IPC)—same as *Individual Habilitation Plan*.

Individual Program Plan (IPP)—same as *Individual Habilitation Plan*.

Individual Service Plan (ISP)—same as *Individual Habilitation Plan*.

Interdisciplinary Team (IDT)—a group of individuals representing the different disciplines in the formulation of a client's Individual Habilitation Plan. That team meets at least annually to develop and review the plans, more frequently if necessary.

Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR)—same as Facility for the Mentally Retarded or Persons with Related Conditions.

Learning—general cognitive competence. The ability to acquire new behaviors, perceptions, and information and to apply previous experiences in new situations.

Legal Status—a designation indicative of an individual's competency to manage their affairs.

Level of Care (LOC)—service needs of the client based upon his/her comprehensive functional status.

Licensed—a determination by the Louisiana Department of Health and Hospitals, Bureau of Health Service Financing, that an ICF/MR meets the state requirements to participate in Louisiana as a provider of ICF/MR services.

Living Unit—a place where a client lives including sleeping, training, dining and activity areas.

LPN—Licensed Practical Nurse.

LSC—Life Safety Code.

LTC—Long Term Care.

Major Life Activities—any one of the following activities or abilities:

- a. self-care;
- b. understanding and use of language;
- c. learning;
- d. mobility;
- e. self-direction;
- f. capacity for independent living.

Measurable Outcomes—a standard or goal by which performance is measured and evaluated.

Mechanical Support—a device used to achieve proper body position or balance.

Medicaid—medical assistance provided according to the State Plan approved under Title XIX of the Social Security Act.

Medicaid Agency—the single state agency responsible for the administration of the Medical Assistance Program (Title XIX). In Louisiana, the Department of Health and Hospitals is the single state agency.

Medicaid Management Information System (MMIS)—the computerized claims processing and information retrieval

system which includes all ICF/MR providers eligible for participation in the Medical Assistance Program. This system is an organized method for payment for claims for all Title XIX Services.

Medical Assistance Program (MAP)—another name for the Medicaid Program.

Medicare—the federally administered Health Insurance program for the aged, blind and disabled under the Title XVIII of the Social Security Act.

Medicare Part A—the Hospital Insurance program authorized under Part A of Title XVIII of the Social Security Act.

Medicare Part B—the Supplementary Medical Insurance program authorized under Part B of Title XVIII of the Social Security Act.

Mental Retardation (MR)—significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.

Note: It shall be emphasized that a finding of low I.Q. is never by itself sufficient to make the diagnosis of mental retardation or in evaluating its severity. A low I.Q. shall serve only to help in making a clinical judgement regarding the client's adaptive behavioral capacity. This judgement also includes present functioning including academic and vocational achievement, motor skills, and social and emotional maturity.

Mobility—motor development and ability to use fine and gross motor skills; the ability to move the extremities at will.

Mobil Nonambulatory—the inability to walk without assistance, but the ability to move from place to place with the use of a device such as a walker, crutches, wheelchair or wheeled platform.

Neglect—the failure to provide proper or necessary medical care, nutrition or other care necessary for a client's well being.

New Facility—an ICF/MR newly opened or recently began participating in the Medical Assistance Program.

Nonambulatory—the inability to walk without assistance.

Nursing Facility or Facility—health care facilities such as a private home, institution, building, residence, or other place which provides maintenance, personal care, or nursing services for persons who are unable to properly care for themselves because of illness, physical infirmity or age. These facilities serve two or more persons who are not related by blood or marriage to the operator and may be operated for profit or nonprofit.

Office for Citizens with Developmental Disabilities (OCDD)—the office within DHH responsible for programs serving the MR/DD population.

Operational—admission of at least one client, completion of functional assessments(s) and development of individual program plan(s) for the client(s); and implementation of the program plan(s) in order that the facility actually demonstrate the ability, knowledge, and competence to provide active treatment.

Overall Plan of Care (OPC)—see *Individual Habilitation Plan*.

Provider—any individual or entity enrolled to furnish Medicaid Services under a provider agreement with the Medicaid Agency.

Qualified Mental Retardation Professional (QMRP)—a person who has specialized training and at least one year or more of experience in treating and/or working directly with and in direct contact with the Mentally Retarded clients. To qualify as a QMRP a person must meet the requirements of 42 CFR 483.430.

Recipient—an individual who has been determined eligible for Medicaid.

Registered Nurse (RN)—a nurse currently registered and licensed by the Louisiana State Board of Nursing.

Representative Payee—a person designated by the Social Security Administration to receive and disburse benefits in the best interest of and according to the needs of the beneficiary.

Responsible Party—a person authorized by the client, agency or sponsor to act as an official delegate or agent in dealing with the Department of Health and Hospitals and/or the ICF/MR.

Self-Care—daily activities which enable a person to meet basic life needs for food, hygiene, appearance and health.

Self-Direction—management and control over one's social and personal life and the ability to make decisions that affect and protect one's own interests. A substantial functional limitation in self-direction would require a person to need assistance in making independent decisions concerning social and individual activities and/or in handling personal finances and/or in protecting his own self-interest.

Significant Assistance—help needed at least one-half of the time for one activity or a need for some help in more than one-half of all activities normally required for self-care.

Significantly Sub-Average—for purposes of certification for ICF/MR an I.Q. score of below 70 on the Wechsler, Stanford-Binet, Cattell, or comparable test will be considered to establish significantly sub-average intellectual functioning.

SNF—Skilled Nursing Facility.

Sponsor—an adult relative, friend, or guardian of the client who has a legitimate interest in or responsibility for the client's welfare. Preferably, this person is designated on the admission forms as "responsible party."

Substantial Functional Limitation—a condition that limits a person from performing normal life activities or makes it unsafe for a person to live alone to such an extent that assistance, supervision, or presence of a second person is required more than half of the time.

Title XIX—see *Medicaid*.

Training and Habilitation Services—services intended to aid the intellectual, sensorimotor and emotional development of a client as part of overall plans to help the individual function at the greatest physical, intellectual, social and vocational level he/she can presently or potentially achieve.

Understanding and Use of Language—communication involving both verbal and nonverbal behavior enabling the individual both to understand others and to express ideas and information to others.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578

(October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:676 (April 1999).

Subchapter B. Participation

§10305. General Provisions

Note: The federal regulation pertaining to this Section is 42 CFR 442-483.400 and 435.1008.

A. Scope

1. The standards set forth in this and subsequent sections comply with the Title XIX requirements of the amended Social Security Act. That Act sets the standards for the care, treatment, health, safety, welfare and comfort of Medical Assistance clients in facilities providing ICF/MR services.

2. These standards apply to ICF/MRs certified and enrolled by the Louisiana Department of Health and Hospitals (DHH) for vendor participation.

3. These standards supplement current licensing requirements applicable to ICF/MRs. Any infraction of these standards may be considered a violation of the provider agreement between DHH and the ICF/MR.

4. In the event any of these standards are not maintained, DHH will determine whether facility certification will continue with deficiencies as is allowed under Title XIX regulations or whether termination of the Provider Agreement is warranted. Although vendor payment will not be suspended during the determination period, deficiencies which may affect the health, safety, rights and welfare of Medical Assistance clients must be corrected expeditiously in order for the ICF/MR to continue to participate.

5. If a certified ICF/MR is found to have deficiencies which immediately jeopardize the health, safety, rights and welfare of its Medical Assistance clients, DHH may initiate proceedings to terminate the ICF/MR's certification. In the event of less serious deficiencies, DHH may impose interim sanctions (see §10357, Sanctions).

B. General Admission and Funding Criteria

Note: The federal regulation pertaining to this Subsection is 42 CFR 483.440.

1. Capacity. The ICF/MR will admit only the number of individuals that does not exceed its rated capacity as determined by the BHSF's HSS and its capacity to provide adequate programming.

2. Admission Requirements. Except on a short term emergency basis, an ICF/MR may not admit individuals as clients unless their needs can be met and an interdisciplinary professional team has determined that admission is the best available plan for them. The team must do the following:

a. conduct a comprehensive evaluation of each individual that covers physical, emotional, social and cognitive factors; and

b. perform the following tasks prior to admission:

i. define the individual's need for service without regard to the availability of those services; and

ii. review all appropriate programs of care, treatment, and training and record the findings;

c. ensure that the ICF/MR takes the following action if admission is not the best plan but the individual must nevertheless be admitted:

i. clearly acknowledges that admission is inappropriate; and

ii. initiates plans to actively explore alternatives.

3. Prohibitions on Federal Financial Participation

a. Federal funds in the Title XIX ICF/MR program are not available for clients whose individual treatment plans are totally or predominately vocational and/or educational. ICF/MR services are designed essentially for those individuals diagnosed as developmentally disabled; having developmental lags which are considered amendable to treatment in a 24-hour managed care environment where they will achieve maximum growth. Services to treat educational and vocational deficits are available at the community level while the client lives in his own home or in another community level placement and are not considered amendable to treatment in a 24-hour managed care environment.

b. Admissions through the Court System

i. Court ordered admissions do not guarantee Medicaid vendor payment to a facility. A court can order that a client be placed in a particular facility but cannot mandate that the services be paid for by the Medicaid program.

ii. Incarcerated individuals are not eligible for Medicaid. The only instance in which such an individual may qualify is if he/she is paroled or released on medical furlough.

C. Enrollment of Intermediate Care Facilities for the Mentally Retarded in the Medicaid Program

1. An ICF/MR may enroll for participation in the Medical Assistance Program (Title XIX) when all the following criteria have been met:

a. the ICF/MR has received Facility Need Review approval from DHH;

b. the ICF/MR has received approval from DHH/OCDD;

c. the ICF/MR has completed an enrollment application for participation in the Medical Assistance Program;

d. the ICF/MR has been surveyed for compliance with federal and state standards, approved for occupancy by the Office of Public Health (OPH) and the Office of the State Fire Marshal, and has been determined eligible for certification on the basis of meeting these standards; and

e. the ICF/MR has been licensed and certified by DHH.

2. Procedures for Certification of New ICF/MRs. The following procedures must be taken in order to be certified as a new ICF/MR.

a. The ICF/MR shall apply for a license and certification.

b. DHH shall conduct or arrange for surveys to determine compliance with Title XIX, Title VI (Civil Rights), Life Safety, and Sanitation Standards.

c. Facilities must be operational a minimum of two weeks (14 calendar days) prior to the initial certification survey. Facilities are not eligible to receive payment prior to the certification date.

i. *Operational* is defined as admission of at least one client, completion of functional assessment and development of individual program plan for each client; and

implementation of the program plan(s) in order for the facility to actually demonstrate the ability, knowledge, and competence to provide active treatment.

ii. Fire and health approvals must be obtained from the proper agencies prior to a client's admission to the facility.

iii. The facility must comply with all standards of the State of Louisiana Licensing Requirements for Residential Care Providers.

iv. A certification survey will be conducted to verify that the facility meets all of these requirements.

d. A new ICF/MR shall be certified only if it is in compliance with all conditions of participation found in 42 CFR 442 and 42 CFR 483.400 et seq.

e. The effective date of certification shall be no sooner than the exit date of the certification survey.

3. Certification Periods

a. DHH may certify an ICF/MR which fully meets applicable requirements for a maximum of 12 months.

b. Prior to the agreement expiration date, the provider agreement may be extended for up to two months after the agreement expiration date if the following conditions are met:

i. the extension will not jeopardize the client's health, safety, rights and welfare; and

ii. the extension is needed to prevent irreparable harm to the ICF/MR or hardship to its clients; or

iii. the extension is needed because it is impracticable to determine whether the ICF/MR meets certification standards before the expiration date.

D. Ownership

Note: The federal regulations pertaining to this Subsection are as follows: 42 CFR 420.205; 440.14; 442.15; 455.100; 455.101; 455.102 and 455.103.

1. Disclosure. All participating Title XIX ICF/MRs are required to supply the DHH Health Standards Section with a completed HCFA Form 1513 (Disclosure of Ownership) which requires information as to the identity of the following individuals:

a. each person having a direct or indirect ownership interest in the ICF/MR of 5 percent or more;

b. each person owning (in whole or in part) an interest of 5 percent or more in any property, assets, mortgage, deed of trust, note or other obligation secured by the ICF/MR;

c. each officer and director when an ICF/MR is organized as a corporation;

d. each partner when an ICF/MR is organized as a partnership;

e. within 35 days from the date of request, each provider shall submit the complete information specified by the BHSF/HSS regarding the following:

i. the ownership of any subcontractor with whom this ICF/MR has had more than \$25,000 in business transactions during the previous 12 months; and

ii. information as to any significant business transactions between the ICF/MR and the subcontractor or wholly owned suppliers during the previous five years.

2. The authorized representative must sign the Provider Agreement.

a. If the provider is a nonincorporated entity and the owner does not sign the provider agreement, a copy of power of attorney shall be submitted to the DHH/HSS showing that the authorized representative is allowed to sign on the owner's behalf.

b. If one partner signs on behalf of another partner in a partnership, a copy of power of attorney shall be submitted to the DHH/HSS showing that the authorized representative is allowed to sign on the owner's behalf.

c. If the provider is a corporation, the board of directors shall furnish a resolution designating the representative authorized to sign a contract for the provision of services under DHH's state Medical Assistance Program.

3. Change in Ownership (CHOW)

a. A Change in Ownership (CHOW) is any change in the legal entity responsible for the operation of the ICF/MR.

b. As a temporary measure during a change of ownership, the BHSF/HSS shall automatically assign the provider agreement and certification, respectively to the new owner. The new owner shall comply with all participation prerequisites simultaneously with the ownership transfer. Failure to promptly complete with these prerequisites may result in the interruption of vendor payment. The new owner shall be required to complete a new provider agreement and enrollment forms referred to in Continued Participation. Such an assignment is subject to all applicable statutes, regulations, terms and conditions under which it was originally issued including, but not limited to the following:

i. any existing correction action plan;

ii. any expiration date;

iii. compliance with applicable health and safety standards;

iv. compliance with the ownership and financial interest disclosure requirements;

v. compliance with Civil Rights requirements;

vi. compliance with any applicable rules for Facility Need Review;

vii. acceptance of the per diem rates established by DHH/BHSF's Institutional Reimbursement Section; and

viii. compliance with any additional requirements imposed by DHH/BHSF/HSS.

c. For an ICF/MR to remain eligible for continued participation after a change of ownership, the ICF/MR shall meet all the following criteria:

i. state licensing requirements;

ii. all Title XIX certification requirements;

iii. completion of a signed provider agreement with the department;

iv. compliance with Title VI of the Civil Rights Act; and

v. enrollment in the Medical Management Information system (MMIS) as a provider of services.

d. A facility may involuntarily or voluntarily lose its participation status in the Medicaid Program. When a facility loses its participation status in the Medicaid Program, a minimum of 10 percent of the final vendor payment to the facility is withheld pending the fulfillment of the following requirements:

i. submission of a limited scope audit of the client's personal funds accounts with findings and recommendations by a qualified accountant of the facility's choice to the department's Institutional Reimbursement Section:

(a). the facility has 60 days to submit the audit findings to Institutional Reimbursement once it has been notified that a limited scope audit is required;

(b). failure of the facility to comply with the audit requirement is considered a Class E violation and will result in fines as outlined in §10357, Sanctions;

ii. the facility's compliance with the recommendations of the limit scope audit;

iii. submittal of an acceptable final cost report by the facility to Institutional Reimbursement;

iv. once these requirements are met, the portion of the payment withheld shall be released by the BHSF's Program Operations Section.

e. Upon notification of completion of the ownership transfer and the new owner's licensing, DHH/HSS will notify the Fiscal Intermediary regarding the effective dates of payment and to whom payment is to be made.

E. Provider Agreement

Note: Federal regulations pertaining to this subsection are as follows: 42 CFR 431.107, 442.10, 442.12, 442.13, 442.15, 442.16, 442.100 and 442.101.

In order to participate as a provider of ICF/MR services under Title XIX, an ICF/MR must enter into a provider agreement with DHH. The provider agreement is the basis for payments by the Medical Assistance Program. The execution of a provider agreement and the assignment of the provider's Medicaid vendor number is contingent upon the following criteria.

1. Facility Need Review Approval Required. Before the ICF/MR can enroll and participate in Title XIX, the Facility Need Review Program must have approved the need for the ICF/MR's enrollment and participation in Title XIX. The Facility Need Review process is governed by Department of Health and Hospitals regulations promulgated under authority of Louisiana R.S. 40:2116.

a. The approval shall designate the appropriate name of the legal entity operating the ICF/MR.

b. If the approval is not issued in the appropriate name of the legal entity operating the ICF/MR, evidence shall be provided to verify that the legal entity that obtained the original Facility Need Review approval is the same legal entity operating the ICF/MR.

2. The ICF/MR's Medicaid Enrollment Application. The ICF/MR shall request a Title XIX Medicaid enrollment packet from the Medical Assistance Program Provider Enrollment Section. The information listed below shall be returned to that office as soon as it is completed:

a. two copies of the Provider Agreement Form with the signature of the person legally designated to enter into the contract with DHH;

b. one copy of the Provider Enrollment Form (PE 50) completed in accordance with accompanying instructions and signed by the administrator or authorized representative;

c. one copy of the Title XIX Utilization Review Plan Agreement Form showing that the ICF/MR accepts DHH's Utilization Review Plan;

d. copies of information and/or legal documents as outlined in Subsection D (Ownership) of this section;

3. The Effective Date of the Provider Agreement. The ICF/MR must be licensed and certified by the BHSF/HSS in accordance with provisions in 42 CFR 442.100-115 and provisions determined by DHH. The effective date of the provider agreement shall be determined as follows.

a. If all federal requirements (health and safety standards) are met on the day of the BHSF/HSS survey, then the effective date of the provider agreement is the date the on-site survey is completed or the day following the expiration of a current agreement.

b. If all requirements are specified in Subparagraph a above are not met on the day of the BHSF/HSS survey, the effective date of the provider agreement is the earliest of the following dates:

i. the date on which the provider meets all requirements; or

ii. the date on which the provider submits a corrective action plan acceptable to the BHSF/HSS; or

iii. the date on which the provider submits a waiver request approved by the BHSF/HSS; or

iv. the date on which both ii and iii above are submitted and approved.

4. The ICF/MR's "Per Diem" Rate. After the ICF/MR facility has been licensed and certified, a per diem rate will be issued by the department.

5. Provider Agreement Responsibilities. The responsibilities of the various parties are spelled out in the Provider Agreement Form. Any changes will be promulgated in accordance with the Administrative Procedure Act.

6. Provider Agreement Time Periods. The provider agreement shall meet the following criteria in regard to time periods.

a. It shall not exceed 12 months.

b. It shall coincide with the certification period set by the BHSF/HSS.

c. After a provider agreement expires, payment may be made to an ICF/MR for up to 30 days.

d. The provider agreement may be extended for up to two months after the expiration date under the following conditions:

i. it is determined that the extension will not jeopardize the client's health, safety, rights and welfare; and

ii. it is determined that the extension is needed to prevent irreparable harm to the ICF/MR or hardship to its clients; or

iii. it is determined that the extension is needed because it is impracticable to determine whether the ICF/MR meets certification standards before the expiration date.

7. Tuberculosis (TB) Testing as Required by the OPH. All residential care facilities licensed by DHH shall comply with the requirements found in Section 3, Chapter II, of the *State Sanitary Code* regarding screening for communicable disease of employees, residents, and volunteers whose work involves direct contact with clients. For questions regarding TB testing, contact the local office of Public Health.

8. Criminal History Checks. Effective July 15, 1996, the Office of State Police will perform criminal history checks on

nonlicensed personnel of health care facilities, in accordance with R.S. 40:1300.51-R.S. 40:1300.56.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:679 (April 1999).

§10307. Payments

Note: Regulations for this Section are found in the state's *Medicaid Eligibility Manual*, Chapter XIX (19).

A. Income Consideration in Determining Payment

1. Clients receiving care under Title XIX. The client's applicable income (liability) will be determined when computing the ICF/MR's vendor payments. Vendor payments are subject to the following conditions.

a. Vendor payments will begin with the first day the client is determined to be categorically and medically eligible or the date of admission, whichever is later.

b. Vendor payment will be made for the number of eligible days as determined by the ICF/MR per diem rate less the client's per diem applicable income.

c. If a client transfers from one facility to another, the vendors' payment to each facility will be calculated by multiplying the number of eligible days times the ICF/MR per diem rate less the client's liability.

2. Client Personal Care Allowance. The ICF/MR will not require that any part of a client's personal care allowance be paid as part of the ICF/MR's fee. Personal care allowance is an amount set apart from a client's available income to be used by the client for his/her personal use. The amount is determined by DHH.

B. Payment Limitations

1. Temporary Absence of the Client. A client's temporary absence from an ICF/MR will not interrupt the monthly vendor payment to the ICF/MR, provided the following conditions are met:

a. the ICF/MR keeps a bed available for the client's return; and

b. the absence is for one of the following reasons:

i. hospitalization, which does not exceed seven days per hospitalization; or

ii. leave of absence. A temporary stay outside the ICF/MR provided for in the client's written Individual Habilitation Plan. A leave of absence will not exceed 45 days per fiscal year (July 1 through June 30), and will not exceed 30 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 45-day limit as long as the leave does not exceed the 30-consecutive-day limit and is included in the written Individual Habilitation Plan. These exceptions are as follows:

- (a). Special Olympics;
- (b). roadrunner-sponsored events;
- (c). Louisiana planned conferences;
- (d). trial discharge leave;

Note: Elopements and unauthorized absences under the Individual Habilitation Plan count against allowable leave days. However, Title XIX eligibility is not affected if the absence does not exceed 30 consecutive days and if the ICF/MR has not discharged the client.

c. the period of absence shall be determined by

counting the first day of absence as the day on which the first 24-hour period of absence expires;

d. a period of 24 continuous hours or more shall be considered an absence. Likewise, a temporary leave of absence for hospitalization or a home visit is broken only if the client returns to the ICF/MR for 24 hours or longer;

e. upon admission, a client must remain in the ICF/MR at least 24 continuous hours in order for the ICF/MR to submit a payment claim for a day of service or reserve a bed;

Example: A client admitted to an ICF/MR in the morning and transferred to the hospital that afternoon would not be eligible for any vendor payment for ICF/MR services.

f. if a client transfers from one facility to another, the unused leave days for the fiscal year also transfer. No additional leave days are allocated as a result of a transfer;

g. the ICF/MR shall promptly notify DHH of absences beyond the applicable 30- or seven-day limitations. Payment to the ICF/MR shall be terminated from the thirty-first or eight day, depending upon the leave of absence. Payment will commence after the individual has been determined eligible for Title XIX benefits and has remained in the ICF/MR for 30 consecutive days;

h. the limit on Title XIX payment for leave days does not mean that further leave days are prohibited when provided for in the Individual Habilitation Plan. After the Title XIX payment limit is met, further leave days may be arranged between the ICF/MR and the client, family or responsible party. Such arrangements may include the following options:

i. the ICF/MR may charge the client, family or responsible party an amount not to exceed the Title XIX daily rate;

ii. the ICF/MR may charge the client, family or responsible party a portion of the Title XIX daily rate;

iii. the ICF/MR may absorb the cost into its operation costs.

2. Temporary Absence of the Client Due to Evacuations. When local conditions require evacuation of ICF/MR residents, the following payment procedures apply:

a. when clients are evacuated for less than 24 hours, the monthly vendor payment is not interrupted;

b. when staff is sent with clients to the evacuation site, the monthly vendor payment is not interrupted;

c. when clients are evacuated to a family's or friend's home at the ICF/MR's request, the ICF/MR shall not submit a claim for a day of service or leave day, and the client's liability shall not be collected;

d. when clients go home at the family's request or on their own initiative, a leave day shall be charged;

e. when clients are admitted to the hospital for the purpose of evacuation of the ICF/MR, Medicaid payment shall not be made for hospital charges.

3. Payment Policy in regard to Date of Admission, Discharge, or Death

a. Medicaid (Title XIX) payments shall be made effective as of the admission date to the ICF/MR. If the client is medically certified as of that date and if either of the following conditions is met:

i. the client is eligible for Medicaid benefits in the ICF/MR (excluding the medically needy); or

ii. the client was in a continuous institutional living arrangement (nursing home, hospital, ICF/MR, or a combination of these institutional living arrangements) for 30 consecutive days; the client must also be determined financially eligible for Medical Assistance.

b. The continuous stay requirement is:

i. considered met if the client dies during the first 30 consecutive days.

ii. not interrupted by the client's absence from the ICF/MR when the absence is for hospitalization or leave of absence which is part of the written Individual Habilitation Plan.

c. The client's applicable income is applied toward the ICF/MR fee effective with the date Medicaid payment is to begin.

d. Medicaid payment is not made for the date of discharge; however, neither the client, family, nor responsible party is to be billed for the date of discharge.

e. Medicaid payment is made for the day of client's death.

Note: The ICF/MR shall promptly notify DHH/BHSF of admissions, death, and/or all discharges.

4. Advance Deposits

a. An ICF/MR shall neither require nor accept an advance deposit from an individual whose Medicaid (Title XIX) eligibility has been established.

Exception: An ICF/MR may require an advance deposit for the current month only on that part of the total payment which is the client's liability.

b. If advance deposits or payments are required from the client, family, or responsible party upon admission when Medicaid (Title XIX) eligibility has not been established, such a deposit shall be refunded or credited to the person upon receipt of vendor payment.

5. Retroactive Payment. When individuals enter an ICF/MR before their Medicaid (Title XIX) eligibility has been established payment for ICF/MR services is made retroactive to the first day of eligibility after admission.

6. Timely Filing for Reimbursements. Vendor payments cannot be made if more than 12 months have elapsed between the month of initial services and submittal of a claim for these services. Exceptions for payments of claims over 12 months old can be made with authorization from DHH/BHSF only.

7. Refunds to Clients

a. When the ICF/MR receives vendor payments, it SHALL refund any fees for services collected from clients, family or responsible party by the end of the month in which vendor payment is received.

b. Advance payments for a client's liability (applicable income) shall be refunded promptly if he/she leaves the ICF/MR.

c. The ICF/MR shall adhere to the following procedures for refunds:

i. The proportionate amount for the remaining days of the month shall be refunded to the client, family, or the responsible party no later than 30 days following the date of discharge. If the client has not yet been certified, the procedures spelled out in (a) above shall apply.

ii. No penalty shall be charged to the client, family, or responsible party even if the circumstances surrounding the discharge occurred as follows:

(a). without prior notice; or

(b). within the initial month; or

(c). within some other "minimum stay" period established by the ICF/MR.

iii. Proof of refund of the unused portion of the applicable income shall be furnished to BHSF upon request.

8. ICF/MR Refunds to the Department

a. Nonparticipating ICF/MR. Vendor payments made for services performed while an ICF/MR is in a nonparticipating status with the Medicaid Program shall be refunded to the Office of Management and Financing, Post Office Box 629, Baton Rouge, LA 70821-0629. The refund shall be made payable to the "Department of Health and Hospitals-Medicaid Program."

b. Participating ICF/MR. A currently participating Title XIX, ICF/MR shall correct billing or payment errors by use of appropriate adjustment void or Patient Liability (PLI) adjustment forms.

9. Sitters. An ICF/MR will neither expect nor require a client to have a sitter. However, the ICF/MR shall permit clients, families, or responsible parties directly to employ and pay sitters when indicated, subject to the following limitations:

a. The use of sitters will be entirely at the client's, family's, or responsible party's discretion. However, the ICF/MR shall have the right to approve the selection of a sitter. If the ICF/MR disapproves the selection of the sitter, the ICF/MR will provide written notification to the client, family, and/or responsible party, and to the Department of Health and Hospitals stating the reasons for disapproval.

b. Payment to sitters is the direct responsibility of the client, family or responsible party, unless:

i. the hospital's policy requires a sitter;

ii. the attending physician requires a sitter; or

iii. the Individual Habilitation Plan (IHP) requires a sitter.

Note: Psychiatric Hospitals are excluded from this requirement.

c. Payment to sitters is the direct responsibility of the ICF/MR facility when:

i. the hospital's policy requires a sitter and the client is on hospital leave days;

ii. the attending physician requires a sitter;

iii. the IHP requires a sitter.

d. A sitter will be expected to abide by the ICF/MR's rules and regulations, including health standards and professional ethics.

e. The presence of a sitter does not absolve the ICF/MR of its full responsibility for the client's care.

f. The ICF/MR is not responsible for providing a sitter if one is required while the resident is on home leave.

10. Tips. The ICF/MR shall not permit tips for services rendered by its employees.

C. Cost Reports

1. Providers shall use the same cost report form, budget form, and cost determination methods prescribed by DHH/BHSF's Institutional Reimbursements Section.

a. All cost report information shall be submitted in accordance with generally accepted accounting principles (GAAP) as well as state and federal regulations.

b. The accrual method of accounting is the only acceptable method for private providers.

c. State institutions shall be allowed to submit data on the cash basis.

2. All costs submitted on cost reports and budgets must be client care related. For information regarding cost report instructions, reporting requirements, allowable and unallowable costs, etc. refer to BHSF's *Rate Setting for Residential Care System Manual*. Requests for a copy of the manual may be submitted to DHH/BHSF/Institutional Reimbursement Section, Post Office Box 546, Baton Rouge, Louisiana 70821-0546.

3. Another source for guidance regarding allowable and unallowable cost is the federal publication Medicare Provider Reimbursement Manual (HIM-15). This manual can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Subchapter C. Client Records

§10309. General Requirements

Note: Federal regulations which pertain to this Subsection are as follows: 42 CFR 433 and 42 CFR 483.400.

A. Written Policies and Procedures. An ICF/MR facility shall have written policies and procedures governing access to, publication of, and dissemination of information from client records.

B. Protection of Records. Client records are the property of the ICF/MR residents and as such shall be protected from loss, damage, tampering, or use by unauthorized individuals. Records may be removed from the ICF/MR's jurisdiction and safekeeping only in accordance with a court order, subpoena or statute.

C. Confidentiality. An ICF/MR facility shall ensure confidential treatment of client records, including information contained in automatic data banks.

1. The client's written consent, if the client is determined competent, shall be required for the release of information to any persons not otherwise authorized under law to receive it. If the client is not documented as competent, a member of the family, responsible party or advocate shall be required to sign.

Note: "Blanket" signed authorizations for release of information from client records are time limited.

2. A record of all disclosures from client's records shall be kept.

3. All staff shall be trained in the policies regarding confidentiality during orientation to the ICF/MR and in subsequent on-the-job and in-service training.

4. Any information concerning a client or family considered too confidential for general knowledge by the ICF/MR staff shall be kept in a separate file by the chief executive officer, his designee, or social worker. A notation

regarding the whereabouts of this information shall be made in the client's record.

D. Availability of Records. The ICF/MR shall make necessary records available to appropriate state and federal personnel upon request.

E. Records Service System

1. The ICF/MR shall maintain an organized central record service for collecting and releasing client information. Copies of appropriate information shall be available in the client living units.

2. A written policy shall be maintained regarding a "charge out system" by which a client's record may be located when it is out of file.

3. The ICF/MR shall maintain a master alphabetical index of all clients.

4. All records shall be maintained in such a fashion as to protect the legal rights of clients, the ICF/MR, and ICF/MR staff.

F. General Contents of Records. A written record shall be maintained for each client.

1. Records shall be adequate for planning and for continuously evaluating each client's habilitation plan and documenting each client's response to and progress in the habilitation plan.

2. Records shall contain sufficient information to allow staff members to execute, monitor and evaluate each client's habilitation program.

G. Specifics Regarding Entries into Client Records. The following procedures shall be adhered to when making entries into a client's record.

1. All entries shall be legible, signed, and dated by the person making the entry.

2. All corrections shall be initialed and completed in such a manner that the original entry remains legible.

3. Entries shall be dated only on the date when they are made.

4. The ICF/MR shall maintain a roster of signatures, initials and identification of individuals making entries in each record.

H. Components of Client Records. Components of client records shall include, but shall not be limited to, the following:

1. admission records;
2. personal property records;
3. financial records;
4. medical records.

a. This includes records of all treatments, drugs, and services for which vendor payments have been made, or which are to be made, under the Medical Assistance Program.

b. This includes the authority for and the date of administration of such treatment, drugs, or services.

c. The ICF/MR shall provide sufficient documentation to enable DHH to verify that each charge is due and proper prior to payment.

5. All other records which DHH finds necessary to determine a ICF/MR's compliance with any federal or state law, rule or regulation promulgated by the DHH.

I. Retention of Records. The ICF/MR shall retain records for whichever of the following time frames is longer:

1. until records are audited and all audit questions are answered;
2. in the case of minors, three years after they become 18 years of age; or
3. three years after the date of discharge, transfer, or death of the client.

J. Interdicted Client. If the ICF/MR client has been interdicted, a copy of the legal documents shall be contained in the client's records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:684 (April 1999).

§10311. Admission Records

A. At the time of admission to the ICF/MR, information shall be entered into the client's record which shall identify and give a history of the client. This identifying information shall at least include the following:

1. a recent photograph;
2. full name;
3. sex;
4. date of birth;
5. ethnic group;
6. birthplace;
7. height;
8. weight;
9. color of hair and eyes;
10. identifying marks;
11. home address, including street address, city, parish and state;
12. Social Security Number;
13. medical assistance identification number;
14. Medicare claim number, if applicable;
15. citizenship;
16. marital status;
17. religious preference;
18. language spoken or understood;
19. dates of service in the United States Armed Forces, if applicable;
20. legal competency status if other than competent;
21. sources of support: social security, Veterans benefits, etc.;
22. father's name, birthplace, social security number, current address, and current phone number;
23. mother's maiden name, birthplace, social security number, current address, and current phone number;
24. name, address, and phone number of next of kin, legal guardian, or other responsible party;
25. date of admission;
26. name, address and telephone number of referral agency or hospital;
27. reason for admission;
28. admitting diagnosis;
29. current diagnosis, including primary and secondary DSM III diagnosis, if applicable;
30. medical information, such as allergies and general health conditions;

31. current legal status;
32. personal attending physician and alternate, if applicable;
33. choice of other service providers;
34. name of funeral home, if appropriate; and
35. any other useful identifying information. Refer to *Admission Review* for procedures.

B. First Month After Admission. Within 30 calendar days after a client's admission, the ICF/MR shall complete and update the following:

1. review and update the pre-admission evaluation;
2. develop a prognosis for programming and placement;
3. ensure that an interdisciplinary team completes a comprehensive evaluation and designs an Individual Habilitation Plan (IHP) for the client which includes a 24-hour schedule.

C. Entries into Client Records During Stay at the ICF/MR. The following information shall be added to each client's record during his/her stay at the ICF/MR:

1. reports of accidents; seizures, illnesses, and treatments for these conditions;
2. records of immunizations;
3. records of all periods where restraints were used, with authorization and justification for each, and records of monitoring in accordance with these standards;
4. reports of at least an annual review and evaluation of the program, developmental progress, and status of each client, as required in these standards;
5. behavior incidents and plans to manage inappropriate behavior;
6. records of visits and contacts with family and other persons;
7. records of attendance, absences, and visits away from the ICF/MR;
8. correspondence pertaining to the client;
9. periodic updates of the admission information (such updating shall be performed in accordance with the written policy of the ICF/MR but at least annually); and
10. appropriate authorizations and consents.

D. Entries at Discharge. At the time of a client's discharge, the QMRP or other professional staff, as appropriate, shall enter a discharge summary into the client's record. This summary shall address the findings, events, and progress of the client while at the ICF/MR and a diagnosis, prognosis, and recommendations for future programming.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:685 (April 1999).

§10313. Medical Records

A. General Requirements. The ICF/MR shall maintain medical records which include clinical, medical, and psychosocial information on each client.

B. Components of Medical Records. Each client's record shall consist of a current active medical section and the ICF/MR's medical files or folders.

1. Active Medical Section. The active medical section shall contain the following information:

- a. at least six months of current pertinent information relating to the active ongoing medical care;
- b. physician certification of the clients' need for admission to the ICF/MR;
- c. physician recertification that the client continues to require the services of the ICF/MR;
- d. nurses quarterly physical assessment. See §10339, Client Health and Habilitation Services;
- e. quarterly, the pharmacy consultant must review the drug regimen of each client;
- f. certification that each IHP has been periodically reviewed and revised.

2. Medical Files. As the active medical section becomes bulky, the outdated information shall be removed and filed in the ICF/MR's medical files.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:685 (April 1999).

§10315. Client Personal Property Records

Note: The federal regulations pertaining to this Section are 42 CFR 483.420.

The ICF/MR shall permit clients to maintain and use their personal property. The number of personal possessions may be limited only for health and safety reasons. When such limitations are imposed, documentation is required in the client's records.

1. Within 24 hours after admission, the ICF/MR shall prepare a written inventory of the personal property a client brings to the ICF/MR.

2. The facility authorized representative shall sign and retain the written inventory and shall give a copy to the client, family or responsible party.

3. The ICF/MR shall revise the written inventory to show if acquired property is lost, destroyed, damaged, replaced or supplemented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:686 (April 1999).

§10317. Client Financial Records

Note: Federal regulations which pertain to this Section are 42 CFR 483.420(b).

A. General Requirements. Clients have the right to maintain their personal funds or to designate someone to assume this responsibility for them. Clients' income may be from Social Security, Supplemental Security Income (SSI), optional State Supplementation, other sources (VA or insurance benefits, etc.) or earnings of the client. A portion of the clients' income is used to pay the clients' share (liability) of the monthly charges for the ICF/MR. The ICF/MR shall:

1. have written policies and procedures for protecting clients' funds and for counseling clients concerning the use of their funds;

2. develop written procedures for the recording and accounting of client's personal funds.

Note: ICF/MRs shall ensure the soundness and accuracy of the client fund account system.

3. train clients to manage as many of their financial affairs as they are capable. Documentation must support that training was provided and the results of that training.

4. maintain current records that include the name of the person (client or person designated) handling each client's personal funds.

5. be responsible for the disbursements, deposits, soundness, and accuracy of the clients' personal funds account when arrangements are made with a federal or state insured banking institution to provide banking services for the clients.

Note: All bank charges, including charges for ordering checks, shall be paid by the ICF/MR and not charged to the clients' personal funds account(s).

6. maintain current, written individual ledger sheet records of all financial transactions involving client's personal funds which the facility is holding and safeguarding.

Note: ICF/MRs shall keep these records in accordance with requirements of law for a trustee in a fiduciary relationship.

7. make personal fund account records available upon request to the client, family, responsible party, and DHH.

B. Components Necessary for a Client Fund Account System. The ICF/MR shall maintain current, written individual records of all financial transactions involving clients' personal funds which the ICF/MR is holding, safeguarding, and accounting.

1. The ICF/MR shall keep these records in accordance with requirements of law for a trustee in a fiduciary relationship which exists for these financial transactions.

2. The ICF/MR shall develop the following procedures to ensure a sound and workable fund accounting system.

a. Individual Client Participation File. Client's ledger sheet shall consist of the following criteria.

i. A file shall exist for each participating client. Each file or record shall contain all transactions pertinent to the account, including the following information:

- (a). name of the client and date of admission;
- (b). deposits
 - (i). date;
 - (ii). source; and
 - (iii). amount.
- (c). withdrawals:
 - (i). date;
 - (ii). check/petty cash voucher number;
 - (iii). payee (if check is issued);
 - (iv). purpose of withdrawal; and
 - (v). amount.
- (d). fund balance after each transaction.

Note: Checks shall not be payable to "cash" or employees of the facility.

ii. Maintain receipts or invoices for disbursements that shall include the following information:

- (a). the date;
- (b). the amount;
- (c). the description of items purchased; and
- (d). the signature of the client, family, or responsible party to support receipt of items.

iii. supporting documentation shall be maintained for each withdrawal as follows:

- (a). cash register receipt with canceled check or petty cash voucher signed by the client; or
- (b). invoice with canceled check or petty cash voucher signed by the client; or
- (c). petty cash voucher signed by the client; or
- (d). canceled check.

Note: Canceled checks written to family members or responsible parties are sufficient receipt for disbursements if coupled with information regarding the purpose of expenditures.

iv. supporting documentation shall be maintained for each deposit as follows:

- (a). Receipts for all cash received on behalf of the residents; and
- (b). Copies of all checks received on behalf of the residents.

v. All monies, either spent on behalf of the client or withdrawn by the client, family, or responsible party, shall be supported on the individual ledger sheet by a receipt, invoice, canceled check, or signed voucher on file.

Note: It is highly recommended that the functions for actual disbursement of cash and reconciling of the cash disbursement record be performed by separate individuals.

vi. The file shall be available to the client, family, or other responsible party upon request during the normal administrative work day.

b. Client's Personal Funds Bank Account(s). ICF/MRs may deposit clients' money in individual or collective bank account(s). The individual or collective account(s) shall:

- (a). be separate and distinct from all ICF/MR facility accounts;
- (b). consist solely of clients' money and shall not be commingled with the ICF/MR facility account(s);
- (c). personal fund record shall be:
 - i. be maintained at the facility; and
 - ii. be available daily upon request during banking hours.

c. Reconciliations of Client's Personal Funds Account(s). There shall be a written reconciliation, at least monthly, by someone other than the custodian of the client's personal funds account(s). "Assets" (cash in bank, both checking and savings) must equal "liabilities" [ledger sheet balance(s)]. Collective bank accounts shall be reconciled to the total of client's ledger sheet balances. The reconciliation shall be reviewed and approved by someone other than the preparer or custodian of the client's personal funds account.

d. Unallowable Charges to Client's Personal Funds Account(s). It is the intent of the State of Louisiana that ICF/MRs provide total maintenance for recipients. The client's personal funds should be set aside for individual wants or to spend as the client sees fit. In the event that a client desires to purchase a certain brand, he/she has the right to use his/her personal funds in this manner; however, the client must be

made aware of what the facility is providing prior to making his/her decision. Written documentation must be maintained to support that the client was made aware of products or services the facility is obligated to provide. Listed below (but not limited to) are items that shall not be charged to a client's personal funds account(s), the client's family or responsible party(s):

- i. clothing. If a client does not have adequate seasonal clothing (including shoes, etc.), it is the responsibility of the facility to provide the clothing;
- ii. personal hygiene items;
- iii. haircuts;
- iv. dentures/braces, etc.;
- v. eyeglasses;
- vi. hearing and other communication aids;
- vii. support braces;
- viii. any other devices identified by the interdisciplinary team;
- ix. wheelchairs;
- x. repair and maintenance of items (d). - (i);
- xi. damage to facility property or the client's possessions; The client may not be charged for damage to facility property or the property of others caused by that individual's destructive behavior. ICF/MRs have a general responsibility to maintain the environment as a cost of doing business. Property of clients damaged or stolen by others must be replaced by the facility;
- xii. transportation;
- xiii. prescription or over-the-counter drugs;
- xiv. recreational costs included in the IHP;
- xv. medical expenses of any nature;
- xvi. tips, gifts, expenses for staff;
- xvii. supplies or items to meet goals of IHP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:686 (April 1999).

§10319. Cash on Hand

A. ICF/MRs shall have a minimum of cash on hand to meet client's spending needs. Cash on hand shall be maintained on the imprest petty cash system which includes pre-numbered petty cash vouchers. Petty cash shall be maintained at the facility and shall be available to the clients 24 hours a day, seven days a week.

B. The facility shall provide the funds to implement the petty cash system and replenish it, as necessary, from the clients' personal funds based on signed vouchers. Vouchers may be signed by clients, families, or responsible parties. When residents cannot sign their name, vouchers shall be signed by two witnesses. Checks issued to replenish the fund should be made payable to "Custodian of Petty Cash." When funds are withdrawn from the clients' savings account to cover signed vouchers, a receipt signed by the custodian of petty cash shall be maintained in lieu of a canceled check.

C. There shall be a written reconciliation, at least weekly, by someone other than the custodian of the petty cash fund. The reconciliation shall be reviewed and approved by someone

other than the preparer or custodian of the petty cash fund.

Note: The facility is responsible for shortages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:687 (April 1999).

§10321. Access to Funds

Clients shall have access to their funds during hours compatible to banking institutions in the community where they live. Large ICF/MRs shall post the times when clients shall have access to their funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999).

§10323. Closing a Discharged Client's Fund Account

When a client is discharged, the ICF/MR shall refund the balance of a client's personal account and that portion of any advance payment not applied directly to the ICF/MR fee. The amount shall be refunded to the client, family or other responsible party within 30 days following the date of discharge. Date, check number, and "to close account" should be noted on the ledger sheet. When the facility is the payee for a Social Security check or other third party payments, the change in payee should be initiated immediately by the facility.

Note: The facility shall allow the client to withdraw a minimum of \$25 from his/her personal funds account on the date of discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999).

§10325. Disposition of a Deceased Client's Personal Funds

A. ICF/MRs, upon a client's death, shall submit written notification within 10 business days to the next of kin disclosing the amount of funds in the deceased's account as of the date of death. The ICF/MR shall hold the funds until the next of kin notifies the ICF/MR whether a succession will be opened.

1. Succession Opened. If a succession is to be opened, the ICF/MR shall release the funds to the administrator of the estate, if one, or according to the judgment of possession.

2. Succession Not Opened. If no succession is to be opened, the ICF/MR shall make the funds payable to the deceased's estate and shall release the funds to the responsible party of record.

B. Release of Funds. In any case in which funds are released in accordance with a court order, judgment of possession, or affidavit, the funds shall be made available to the persons or parties cited by the court order. The signed

statement shall be attached to the written authority and filed in the ICF/MR records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999).

§10327. Disposition of Deceased Client's Unclaimed Personal Funds

A. If the ICF/MR retains the funds and the responsible party (legal guardian, administrator of the estate, or person placed in possession by the court judgment) fails to obtain the funds within three months after the date of death, or if the ICF/MR fails to receive notification of the appointment of or other designation of a responsible party within three months after the death, the ICF/MR shall notify the secretary of the Department of Revenue, Unclaimed Property Section. The notice shall provide detailed information about the decedent, his next of kin, and the amount of funds.

1. The facility shall continue to retain the funds until a court order specifies that the funds are to be turned over to secretary of the Department of Revenue.

2. If no order or judgment is forthcoming, the ICF/MR shall retain the funds for five years after date of death.

3. After five years, the ICF/MR is responsible for delivering the unclaimed funds to the secretary of Revenue.

4. A termination date of the account and the reason for termination shall be recorded on the client's participation file. A notation shall read, "to close account." The endorsed canceled check with check number noted on the ledger sheet shall serve as sufficient receipt and documentation.

5. Where the legislature has enacted a law governing the disposition of personal funds belonging to residents of state schools for the mentally retarded or developmentally disabled that law shall be applicable.

B. References. References for §§10325 and 10327 above are as follows:

1. *Civil Code* Article 2951 which deals with deposits of a deceased person.

2. *Code of Civil Procedure*, Articles 3421-3434, which deals with small successions requiring no judicial proceedings. Section 3431 specifically refers to persons who die intestate leaving no immovable property and whose sole heirs are his descendants, ascendants or surviving spouse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999).

Subchapter D. Transfers and Discharges

§10329. Written Agreements with Outside Resources

Note: The federal regulations pertaining to this Section are 483.410(d), 483.410(d)(1) through 483.410(d)(2)(ii) and 483.440(b)(1) through 483.440(b)(5)(ii).

Each client must have the services which are required to meet his needs including emergency and other health care. If the service is not provided directly, there must be a written agreement with an outside resource. The written agreement for

hospital transfers must be with hospitals within close proximity and must provide for prompt transfer of clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:688 (April 1999).

§10331. Facility Responsibilities for Planned or Voluntary Transfer or Discharge Policies Requirements

A. Facility record shall document that the client was transferred or discharged for good cause which means for any reason that is in the best interest of the individual.

B. Any decision to move a client shall be part of an interdisciplinary team process. The client, family, legal representative, and advocate, if there is one, shall participate in the decision making process.

C. Planning for a client's discharge or transfer shall allow for at least 30 days to prepare the client and parents/guardian for the change except in emergencies.

D. Planning for release of a client shall include providing for appropriate services in the client's new environment, including protective supervision and other follow-up services which are detailed in his discharge plan.

E. The client and/or legal representative must give their written consent to all non-emergency situations. Notification shall be made to the parents or guardians as soon as possible.

F. Both the discharging and receiving facilities shall share responsibility for ensuring the interchange of medical and other programmatic information which shall include:

1. an updated active treatment plan;
2. appropriate transportation and care of the client during transfer; and
3. the transfer of personal effects and of information related to such items;

G. Representatives from the staff of both the sending and receiving facilities shall confer as often as necessary to share appropriate information regarding all aspects of the client's care and habilitation training. The transferring facility is responsible for developing a final summary of the client's developmental, behavioral, social, health, and nutritional status, and with the consent of the client and/or legal guardian, providing a copy to authorized persons and agencies.

H. The facility shall establish procedures for counseling clients or legal representatives, concerning the advantages and disadvantages of the possible release. This counseling shall include information regarding after care services available through agency and community resources.

I. All clients being transferred or discharged shall be given appropriate information about the new living arrangement. Counseling shall be provided if they are not in agreement. (See "Involuntary Transfers" if client is being transferred against his will).

J. The basic policy of client's right to the most appropriate placement which will meet his needs shall govern all transfer/discharge planning. Clients are not to be maintained

in inappropriate placements or replacements in which their needs cannot adequately be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:689 (April 1999).

§10333. Involuntary Transfer or Discharge

A. Conditions. Involuntary transfer or discharge of a client may occur only under the following conditions:

1. for medical reasons or for the welfare of other clients;
2. for nonpayment of a bill for care received;
3. for emergency situations such as fire, contagious disease, or a severe threat to client safety and well being.

B. Facility Responsibilities. Facility responsibilities when an involuntary transfer or discharge occurs shall include the following:

1. a written report detailing the circumstances leading up to the decision for involuntary discharge or transfer shall be placed in the client's clinical record;

2. interdisciplinary team conference shall be conducted with the client, family member or legal representative and appropriate agency representative to update the plan and develop discharge options that will provide reasonable assurances that clients will be transferred or discharged to a setting that can be expected to meet his needs;

3. a written notice of involuntary transfer shall be prepared; this notice shall be sent to the following individuals:

- a. client
- b. legal representative
- c. attending physician
- d. Office for Citizens with Developmental Disabilities
- e. DHH's Health Standards Section
- f. appropriate educational authorities
- g. representative of client's choice

4. time frames for written notice of involuntary transfer or discharge shall be:

a. at least 15 days before discharge or transfer in cases of nonpayment of bill for cost of care;

b. the written notice of transfer or discharge shall be given to appropriate individuals and agencies at least 72 hours prior to the final interdisciplinary team conference referred to in §10333.A.1 and 3;

c. as soon as possible before discharge or transfer in emergency situations as determined by the interdisciplinary team.

5. written notice of transfer or discharge shall contain the following information:

- a. the proposed date of transfer or discharge;
- b. the reason(s) for transfer or discharge;
- c. a date, time, and place for the follow-up interdisciplinary team conference to make final decision on the client's/legal representative choice of new facility or alternative living arrangement;
- d. names of facility personnel available to assist client and family in decision making and transfer arrangements;

e. explanation of client's right to have personal and/or third party representation at all stages of the transfer or discharge process;

f. explanation of client's right to register a complaint with DHH within three days after the follow-up interdisciplinary team conference.

6. at the final conference, the chief executive officer and/or social service staff shall meet with the client and legal representative within the 72-hour stated on the written notice time period or earlier.

7. the facility shall provide all services required prior to discharge that are contained in the final update of the Individual Habilitation Plan and in the transfer or discharge plan.

8. the facility shall be responsible for keeping the client, whenever medical or other conditions warrant such action, for as long as necessary even if beyond the proposed date of transfer or discharge, except in emergency situations.

9. the facility shall provide transportation to the new residence unless other arrangements are preferred by the client/legal representative or the receiving facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:689 (April 1999).

§10335. Mass Transfer of Clients

The following provisions shall apply to any mass transfer:

1. ICF/MR Decertification. When DHH/BHSF determines that an ICF/MR no longer meets state and federal Title XIX certification requirements, decertification action is taken. Usually an advance decertification date is set unless clients are in immediate danger.

2. ICF/MR Decertification Notice. On the date the ICF/MR is notified of its decertification, DHH shall begin notifying clients, families, responsible parties, and other appropriate agencies or individuals of the decertification action and of the services available to ensure an orderly transfer and continuity of care.

3. ICF/MR Closing or Withdrawing from Title XIX Program. In institutions where an ICF/MR either voluntarily or involuntarily discontinues its operations or participation in the Medical Assistance Program, clients, families, responsible parties, and other appropriate agencies or individuals shall be notified as far in advance of the effective date as possible to insure an orderly transfer and continuity of care.

a. If the ICF/MR is closing its operations, plans shall be made for transfer.

b. If the ICF/MR is voluntarily or involuntarily withdrawing from Title XIX participation, the client has the option of remaining in the ICF/MR on a private-pay basis.

4. Payment Limitation. Payments may continue for clients up to 30 days following the effective date of the ICF/MR's decertification.

a. There shall be NO payments approved for Title XIX clients admitted after an ICF/MR receives a notice of decertification.

b. The payment limitation also applies to Title XIX clients admitted prior to the decertification notice.

c. Payment is continued to the ICF/MR for clients certified prior to the decertification only if the ICF/MR totally cooperates in the orderly transfer of clients to other Title XIX facilities or other placements of their choice.

Note: The ICF/MR's failure to comply with the transfer team's requests may result in denial of reimbursement during the extension period.

Note: The ICF/MR still retains its usual responsibility during the transfer/discharge process to notify the BHSF Medicaid Eligibility Parish Office promptly of all changes in the client's status.

5. Client Rights. Nothing in the transfer or discharge plan shall interfere with client's exercise of his rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:690 (April 1999).

Subchapter E. Facility Records

§10337. General Requirements

Note: The federal regulations which pertain to this Section are 42 CFR 433 and 42 CFR 442.

A. The ICF/MR shall retain such records on file as required by DHH and shall have them available for inspection at request for three years from the date of service or until all audit exceptions are resolved, whichever period is longer.

B. Provider Agreement. The ICF/MR shall retain a copy of the Provider Agreement and any document pertaining to the licensing or certification of the ICF/MR.

C. Accounting Records

1. Accounting records must be maintained in accordance with generally accepted accounting principles as well as state and federal regulations. The accrual method of accounting is the only acceptable method for private providers.

Note: Purchase discounts, allowance and refunds will be recorded as a reduction of the cost to which they related.

2. Each facility must maintain all accounting records, books, invoices, canceled checks, payroll records, and other documents relative to client care costs for a period of three years or until all audit exceptions are resolved, whichever period is longer.

3. All fiscal and other records pertaining to client care costs shall be subject at all times to inspection and audit by DHH, the legislative auditor, and auditors of appropriate federal funding agencies.

D. Daily Census Records. Each facility must maintain statistical information related to the daily census and/or attendance records for all clients receiving care in the facility.

E. Employee Records

1. The ICF/MR shall retain written verification of hours worked by individual employees.

a. Records may be sign-in sheets or time cards, but shall indicate the date and hours worked.

b. Records shall include all employees even on a contractual or consultant basis.

2. Verification of criminal background check.

3. Verification of employee orientation and in-service training.

4. Verification of the employee's communicable disease screening.

F. Billing Records

1. The ICF/MR shall maintain billing records in accordance with recognized fiscal and accounting procedures. Individual records shall be maintained for each client. These records shall meet the following criteria.

- a. Records shall clearly detail each charge and each payment made on behalf of the client.
- b. Records shall be current and shall clearly reveal to whom charges were made and for whom payments were received.
- c. Records shall itemize each billing entry.
- d. Records shall show the amount of each payment received and the date received.

2. The ICF/MR shall maintain supporting fiscal documents and other records necessary to ensure that claims are made in accordance with federal and state requirements.

G. Client Records. See Subchapter C, Client Records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:690 (April 1999).

Subchapter F. Health Services

§10339. Client Health and Habilitative Services

A. *Intermediate Care Facilities for the Mentally Retarded (ICF/MR)* are defined as intermediate care facilities whose primary purpose is to provide health or habilitative services for mentally retarded individuals or persons with related conditions and meet the standards in 42 CFR 442 and 483.400.

B. The following health and habilitative services must be provided to all clients.

1. Active Treatment Services. The facility must provide or arrange for each client to receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the Individual Habilitation Plan (IHP). These services include but are not limited to occupational, speech, physical and recreational therapies; psychological, psychiatric, audiology, social work, special education, dietary and rehabilitation counseling.

Note: Supplies, equipment, etc. needed to meet the goals of the IHP cannot be charged to the client or their responsible parties.

2. Active Treatment Components

a. Individual Habilitation Plan. Each client must have an Individual Habilitation Plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to identifying the client's needs as described by the programs that meet those needs.

i. The facility must document in the Individual Habilitation Plan (IHP) the presence, or the reason for absence, at the individual's staffing conference of the client, family members and relevant disciplines, professions or service areas as identified in the comprehensive functional assessment.

ii. Within 30 days after admission, the interdisciplinary team must do assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission.

iii. The comprehensive functional assessment must take into consideration the client's age and the implications for active treatment at each stage as applicable. It must contain the following components:

- (a). the presenting problems and disabilities and where possible, their causes including diagnosis, symptoms, complaints and complications;
- (b). the client's specific developmental strengths;
- (c). the client's specific developmental and behavioral management needs;
- (d). an identification of the client's needs for services without regard to the actual availability of the services.

iv. The comprehensive functional assessment must cover the following developmental areas:

- (a). physical development and health;
- (b). nutritional status;
- (c). sensorimotor development;
- (d). affective development;
- (e). speech and language development;
- (f). auditory functioning;
- (g). cognitive development;
- (h). social development;
- (i). adaptive behaviors or independent living skills necessary for the client to be able to function in the community;
- (j). vocational skills as applicable;
- (k). psychological development.

b. Specific Objectives. Within 30 days after admission, the interdisciplinary team must prepare for each client an IHP that states specific objectives necessary to meet the client's needs, as identified by the comprehensive functional assessment, and states the plan for achieving these objectives.

- i. Components for these objectives must be:
 - (a). stated separately, in terms of a single behavioral outcome;
 - (b). be assigned projected completion dates;
 - (c). be expressed in behavioral terms that provide measurable indices of performance;
 - (d). be organized to reflect a developmental disability;
 - (e). be assigned priorities.

ii. A copy of each client's Individual Habilitation Plan must be made available to all relevant staff, including staff of other agencies who work with the client, the client, parents if the client is a minor, or legal guardian. The Individual's Habilitation Plan must be implemented within 14 calendar days of its development.

iii. The facility must develop and make available to relevant staff an active treatment schedule that outlines the current active treatment program.

iv. Each written training program designed to implement these objectives in the Individual Habilitation Plan must specify:

- (a). the methods to be used;
- (b). the schedule for use of the methods;
- (c). the person responsible for the program;
- (d). the type of data and frequency of data collection necessary to be able to assess progress toward the desired objectives;
- (e). the inappropriate client behavior(s), if applicable; and
- (f). a provision for the appropriate expression and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

v. The IHP must also:

- (a). describe relevant interventions to support the individual toward independence;
- (b). identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found;
- (c). include, for those clients who lack them, training in personal skills essential for privacy and independence (including skills and activities of daily living) until it has been demonstrated that the client is developmentally incapable of applying them;
- (d). plans for discharge.

vi. The IHP must identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. This plan must specify:

- (a). the reason for each support;
- (b). the situation in which each is to be applied;
- (c). a schedule for the use of each support.

vii. Clients who have multiple disabling conditions must be provided the opportunity to spend a major portion of each working day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

viii. The IHP must include opportunities for client choice and self management.

c. Documentation. The facility must document data relevant to the accomplishment of the criteria specified in the client's Individual Habilitation Plan objectives. This data must meet certain criteria.

i. Data must be documented in measurable outcomes;

ii. Significant events related to the client's Individual Habilitation Plan and assessment and that contribute to an overall understanding of his ongoing level and quality of function must be documented;

iii. The Individual Habilitation Plan must be reviewed by a qualified mental retardation professional at least quarterly or as needed and revised as necessary, including but not limited to situations in which the client:

- (a). has successfully completed an objective or objectives identified in the Individual Habilitation Plan;
- (b). is regressing or losing skills;
- (c). is failing to progress toward identified objectives after reasonable efforts have been made;
- (d). is being considered for training toward new objectives.

iv. At least annually, the comprehensive assessment of each client must be reviewed by the interdisciplinary team

for relevancy and updated as needed. The Individual Habilitation Plan must be revised as needed or at least by the 365th day after the last review.

Note: For admission requirements, refer to §10301, Participation.

3. Health Services

a. Physician Services. The health care of each client shall be under the continuing supervision of a Louisiana licensed physician. The facility must ensure the availability of physician services 24 hours a day. The facility must provide or obtain preventive and general medical care plus annual physical examinations of each client.

i. The client, the family or the responsible party shall be allowed a choice of physicians.

ii. If the client does not have a personal physician, the ICF/MR shall provide referrals to physicians in the area, identifying physicians that participate in the Medicaid Program.

Note: The cost of physician services cannot be charged to the client or their responsible parties.

b. Nursing Services. The facility must provide each client nursing services as prescribed by a physician or as identified by the Individual Habilitation Plan and client needs.

Note: The cost for nursing services cannot be charged to the client or their legal representative.

i. Nursing services must include:

(a). the development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(b). twenty-four-hour nursing service as indicated by the medical care plan or other nursing care as prescribed by the physician or as identified by client needs;

(c). review of individual client health status on a quarterly or more frequent basis;

(d). training clients and staff as needed in appropriate health and hygiene methods and self-administration of medications;

(e). notify the physician of any changes in the client's health status.

ii. If the facility utilizes only licensed practical nurses to provide health services, it must have a formal arrangement with a registered nurse licensed to practice in Louisiana to be available for verbal or on-site consultation to the licensed practical nurse.

c. Dental Services. The facility must provide or arrange for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement. The facility must ensure that dental treatment services include dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental health. The facility must ensure the availability of emergency treatment on a 24-hour per day basis by a licensed dentist.

Note: The cost for these dental services cannot be charged to the client or their responsible party.

d. Pharmaceutical Services. The facility must provide or arrange for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

i. Routine administration of medications shall be done at the facility where the client resides. Clients may not be transported elsewhere for the sole purpose of medication administration.

ii. The ICF/MR shall neither expect, nor require, any provider to give a discount or rebate for prescription services rendered by the pharmacists.

iii. The ICF/MR shall order at least a one month supply of medications from a pharmacy of the client's, family's, or responsible party's choice. Less than a month's supply is ordered only when the attending physician specifies that a smaller quantity of medication is necessary for a special medical reason.

iv. The ICF/MR Chief Executive Officer or the authorized representative shall certify receipt of prescribed medications by signing and dating the pharmacy billing.

Note: The costs for drugs and biologicals cannot be charged to the client, family or responsible party including any additional charges for the use of the unit dose or blister pack system of packing and storing medications.

v. Aids and Equipment. The facility must furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communication aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

Note: The costs for aids and equipment cannot be charged to the clients or their legal representatives.

e. Nutritional Services. The facility must provide a nourishing, well-balanced diet for each client, including modified and specially prescribed diets. The nutritional component must be under the guidance of a licensed dietitian.

Note: Nutritional services are included in the per diem rate. Residents of ICF/MR facilities are not eligible for Food Stamps, Commodities, or other subsidized food programs.

f. Clothing. The facility should provide adequate seasonal clothing for the client. *Adequate* is defined as a seven-day supply in good repair and properly fitting. Work uniforms or special clothing/equipment for training will be provided in addition to the seven-day supply.

i. The facility must maintain a current clothing inventory for each client.

ii. A client with adequate clothing may purchase additional clothing using his/her personal funds if he/she desires.

iii. If a client desires to purchase a certain brand, the client has the right to use his/her personal funds in this manner; however, the client must be made aware of what the facility is providing prior to making his/her decision.

Note: For more information on services that must be provided by the ICF/MR facility or may be purchased by the client, see §10307, Payment.

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HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:691 (April 1999).

§10341. Client Behavior

Note: The federal regulations pertaining to this Section are 42 CFR 483.420, 483.440, and 483.450. The state laws pertaining to this Section are R.S. 40:2009.2-RS. 40:2009.20 and R.S. 403.2.

A. Written Policies and Procedures

1. A facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures will:

a. specify conduct to be allowed and not allowed by staff and/or clients;

b. provide for client choice and self determination to the extent possible;

c. be readily available to all clients, parent(s), staff, and legal guardians;

d. be developed with the participation of clients to the extent possible.

2. A facility must develop and implement written policies and procedures for the management of inappropriate client behavior. These policies and procedures must:

a. specify all facility approved interventions to manage inappropriate client behavior;

b. designate these interventions on a hierarchy ranging from the most positive and least restrictive to the least positive and most restrictive;

c. insure that, prior to the use of more restrictive techniques, the client's record document that programs incorporating the use of less intrusive or more positive techniques have been tried first and found to be ineffective;

d. address the use of:

- i. time-out rooms;
- ii. physical restraints;
- iii. drugs used to manage inappropriate behavior;
- iv. application of painful or noxious stimuli;
- v. the staff members who may authorize use of a particular intervention;
- vi. a mechanism for monitoring and controlling use of the intervention.

B. Interventions to Manage Inappropriate Client Behavior

1. Safety and Supervision. Interventions to manage inappropriate client behavior must be used within sufficient safeguards and supervision to insure that the safety, welfare, and civil and human rights of clients are adequately protected. These interventions must:

a. never be used for disciplinary purposes, for the convenience of staff, or as a substitute for an active treatment program;

b. never include corporal punishment;

c. never include discipline of one client by another except as part of an organized system of self government as set forth in facility policy.

2. Individual Plans and Approval. Individual programs to manage inappropriate client behavior must be incorporated into the client's individual program plan and must be reviewed, approved, and monitored by the Specially Constituted Committee. Written informed consent by the client or legal representative is required prior to implementation of a behavior management plan involving any risks to client's rights. (See §10343, Client Rights, which addresses informed consent.)

3. Standing Programs. Standing or as needed programs to control inappropriate behavior are not permitted. To send a client to his room when his behavior becomes inappropriate

is not acceptable unless part of a systematic program of behavioral interventions for the individual client.

4. Time-out Rooms

a. Use of time-out rooms is not permitted in group or community homes.

b. In institutional settings, it is permitted only when professional staff is on-site and only under the following conditions:

i. the placement in a time-out room is part of an approved systematic behavior program as required in the individual program to manage inappropriate behavior discussed under Subsection B above; emergency placement is not allowed;

ii. the client is under direct constant visual supervision of designated staff;

iii. if the door to the room is closed, it must be held shut only by use of constant physical pressure from a staff member;

iv. placement in time-out room does not exceed one hour;

v. clients are protected from hazardous conditions while in time-out rooms;

vi. a record is kept of time-out activities.

5. **Physical Restraint.** *Physical restraint* is defined as any manual method or physical or mechanical device that the individual cannot remove easily and which restricts free movement. Examples of manual methods include: therapeutic or basket holds and prone or supine containment. Examples of physical or mechanical devices include: barred enclosure which must be no more than 3 feet in height and must be; chair with a lap tray used to keep an ambulatory client seated; wheelchair tied to prevent movement of a wheelchair mobile client; straps used to prevent movement while client is in chair or bed. Physical restraints can be used only:

a. when absolutely necessary to protect the client from injuring himself or others in an emergency situation;

b. when part of an individual program plan intended to lead to less restrictive means of managing the behavior the restraints are being used to control;

c. as a health related protection prescribed by a physician but only if absolutely necessary during a specific medical, dental, or surgical procedure or while a medical condition exists;

d. when the following conditions are met:

i. orders for restraints are not obtained for use on a standing or on an as needed basis;

ii. restraint authorizations are not in effect longer than 12 consecutive hours and are obtained as soon as possible after restraint has occurred in emergency situations;

iii. clients in restraints are checked at least every 30 minutes and released as quickly as possible. Record of restraint checks and usage is required;

iv. restraints are designed and used so as not to cause physical injury and so as to cause the least possible discomfort;

v. opportunities for motion and exercise are provided for not less than 10 minutes during each two-hour period and a record is kept; and

vi. restraints are applied only by staff who have had training in the use of these interventions.

6. **Drugs.** Drugs used for control of inappropriate behavior may be used only under the following conditions:

a. drugs must be used only in doses that do not interfere with the client's daily living activities;

b. drugs used for control of inappropriate behavior must be approved by the interdisciplinary team, the client, legal representative, and specially constituted committee. These drugs must be used only as part of the client's individual program plan that is directed toward eliminating the behavior the drugs are thought to control;

c. prior to the use of any program involving a risk to client protection and rights, including the use of drugs to manage inappropriate behavior, written informed consent must be obtained from:

i. client; or

ii. family, legal representative, or advocate if client is a minor or client is mentally unable to understand the intended program or treatment.

d. informed consent consists of permission given voluntarily on a time limited basis not to exceed 365 days by the client or the legally appropriate party after having been informed of the:

i. specific issue treatment or procedure;

ii. client's specific status with regard to the issue;

iii. attendant risks regarding the issue;

iv. acceptable alternatives to the issue;

v. right to refuse;

vi. consequences of refusal.

e. drugs must not be used until it can be justified that the beneficial effects of the drug on the client's behavior clearly outweighs the potentially harmful effects of the drug;

f. drugs must be clearly monitored in conjunction with the physician, the pharmacist, and facility staff;

g. unless clinical evidence justifies that this is contraindicated, drugs for control of inappropriate behavior must be gradually reduced at least annually in a carefully monitored program conducted in conjunction with the interdisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:693 (April 1999).

§10343. Client Rights

Note: Code of Federal Regulations pertaining to this Section are as follows: 42 CFR 483.420 and 483.410 (1), (2), (3). Federal laws pertaining to this Section are as follows: Section 601 of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and Age Discrimination Act of 1975. The state law pertaining to this Section is R.S. 28.390 Rights Law.

A. **Written Policies.** The ICF/MR will establish written policies that safeguard clients' rights and define their responsibilities. The ICF/MR chief executive officer and ICF/MR staff will be trained in and will adhere to client rights policies and procedures. ICF/MR personnel will protect and promote clients' civil rights and rights to a dignified existence, self-determination, communication with and access to persons

and services inside and outside the facility and to exercise their legal rights. The chief executive officer will be responsible for staff compliance with client rights policies.

B. Notification of Rights

1. All clients, families, and/or responsible parties will sign a statement that they have been fully informed verbally and in writing of the following information at the time of admission and when changes occur during the client's stay in the facility:

- a. the facility's rules and regulations;
- b. their rights;
- c. their responsibilities to obey all reasonable rules and regulations and respect the personal rights and private property of clients; and
- d. rules for conduct at the time of their admissions and subsequent changes during their stay in the facility.

2. Changes in client right policies will be conveyed both verbally and in writing to each client, family, and/or responsible party at the time of or before the change.

3. Receipt of the change will be acknowledged in writing by each client who is capable of doing so, family, and/or responsible party.

4. A client's written acknowledgment will be witnessed by a third person.

5. Each client must be fully informed in writing of all services available in the ICF/MR and of the charges for these services including any charges for services not paid for by Medicaid or not included in the facility's basic rate per day charges. The facility must provide this information either before or at the time of admission and on a continuing basis as changes occur in services or charges during the client's stay.

C. Civil Rights Act of 1964 (Title VI). Title VI of the Civil Rights Act of 1964 states the following: "No persons in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." The facility will meet the following criteria in regards to the above-mentioned Act.

1. Compliance. The facility will be in compliance with Title VI of the Civil Rights Act of 1964 and will not discriminate, separate, or make any distinction in housing, services, or activities based on race, color, or national origin.

2. Written Policies. The facility will adopt and implement written policies for compliance with the Civil Rights Act. All employees and contract service providers who provide services to clients will be notified in writing of the Civil Rights policy.

3. Community Notification. The facility will notify the community that admission to the ICF/MR, services to clients, and other activities are provided without regard to race, color, or national origin.

a. Notice to the community may be given by letters to and meetings with physicians, local health and welfare agencies, paramedical personnel, and public and private organizations having interest in equal opportunity.

b. Notices published in newspapers and signs posted in the facility may also be used to inform the public.

4. Housing. All clients will be housed without regard to race, color, or national origin.

a. ICF/MRs will not have dual accommodations to effect racial segregation.

b. Biracial occupancy of rooms on a nondiscriminatory basis will be required. There will be a policy prohibiting assignment of rooms by race.

c. Clients will not be asked if they are willing to share a room with a person of another race, color, or national origin.

d. Client transfer will not be used to evade compliance with Title VI of the Civil Rights Act of 1964.

5. Open Admission Policy. An open admission policy and desegregation of ICF/MR will be required, particularly when the facility previously excluded or primarily serviced clients of a particular race, color, or national origin. Facilities that exclusively serve clients of one race have the responsibility for taking corrective action, unless documentation is provided that this pattern has not resulted from discriminatory practices.

6. Client Services. All clients will be provided medical, non-medical, and volunteer services without regard to race, color, or national origin. All administrative, medical and non-medical services are covered by this requirement.

7. All ICF/MR staff will be permitted to provide client services without regard to race, color, or national origin.

a. Medical, paramedical, or the professional persons, whether engaged in contractual or consultative capacities, will be selected and employed in a nondiscriminatory manner.

b. Opportunity for employment will not be denied to qualified persons on the basis of race color, or national origin.

c. Dismissal from employment will not be based upon race, color, or national origin.

D. Section 504 of the Rehabilitation Act of 1973. Facilities will comply with Section 504 of the Rehabilitation Act of 1973 that states: "No qualified person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance."

E. Age Discrimination Act of 1975. This Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. All ICF/MRs must be in compliance with this Act.

F. Americans with Disabilities Act of 1990. All ICF/MR facilities must be in compliance with this Act.

G. Client Rights. The facility must comply with 42 CFR 483.420 and the provisions below.

1. Each client must:

a. be fully informed by a physician of his health and medical condition unless the physician decides that informing the client is medically contraindicated;

b. be given the opportunity to participate in planning his total care and medical treatment;

c. be given the opportunity to refuse treatment; and

d. give informed, written consent before participating in experimental research.

2. If the physician decides that informing the client of his health and medical condition is medically contraindicated, he must document this decision in the client's record.

3. Each client must be transferred or discharged only in accordance with the discharge plans in the IHP (see §10339, Client Health and Habilitation).

4. Each client must be:

- a. encouraged and assisted to exercise his rights as a client of the facility and as a citizen; and
- b. allowed to submit complaints or recommendations concerning the policies and services of the ICF/MR to staff or to outside representatives of the client's choice or both, free from restraining, interference, coercion, discrimination, or reprisal. This includes the right to due process.

5. Each client must be allowed to manage his personal financial affairs and taught to do so to the extent of individual capability. If a client requested assistance from the facility in managing his personal financial affairs:

- a. the request must be in writing; and
- b. the facility must comply with the record keeping requirements of Subchapter C, Client Records and Subchapter E, Facility Records.

6. Freedom from Abuse and Restraints

- a. Each client must be free from physical, verbal, sexual or psychological abuse or punishment.
- b. Each client must be free from chemical and physical restraints unless the restraints are used in accordance with §10339, Client Health and Habilitation.

7. Privacy

- a. Each client must be treated with consideration, respect, and full recognition of his dignity and individuality.
- b. Each client must be given privacy during treatment and care of personal needs.
- c. Each client's records, including information in an automatic data base, must be treated confidentially.
- d. Each client must give written consent before the facility may release information from his record to someone not otherwise authorized by law to receive it.
- e. A married client must be given privacy during visits by his spouse.

Note: If both husband and wife are residents of the facility, they must be permitted to share a room.

8. No client may be required to perform services for the facility. Those clients who by choice work for the facility must be compensated for their efforts at prevailing wages and commensurate with their abilities.

9. Each client must be allowed to:

- a. communicate, associate, and meet privately with individuals of his choice, unless this infringes on the rights of another client;
- b. send and receive personal mail unopened; and
- c. have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within his individual program plan.

10. Each client must be allowed to participate in social, religious, and community group activities.

11. Each client must be allowed to retain and use his personal possessions and clothing as space permits.

12. Each client may be allowed burial insurance policy(s). The facility administrator or designee, with the client's permission, may assist the resident in acquiring a burial policy, provided that the administrator, designee, or affiliated persons

derive no financial or other benefit from the resident's acquisition of the policy.

H. Violation of Rights. A person who submits or reports a complaint concerning a suspected violation of a client's rights or concerning services or conditions in an ICF/MR or who testifies in any administrative or judicial proceedings arising from such complaints will have immunity from any criminal or civil liability therefore, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justifiable issue of either law or fact by the complaining party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:694 (April 1999).

§10345. Complaints

A. Purpose and Scope. Under the provisions of Louisiana R.S. 40:2009.13-40:2009.20 and 14:4032 federal regulation 42 CFR 483.405, 483.420, 483.440 and the state Operations Manual published by the Department of Health and Hospitals and Health Care Financing Administration, the following procedures are established for receiving, evaluating, investigating, and correcting grievances concerning client care in ICF/MR licensed and certified ICF/MR facilities. The following procedures also provide mandatory reporting of abuse and neglect in ICF/MR facilities.

B. Applicability

1. Any person having knowledge of the alleged abuse or neglect of a client or knowledge of a client being denied care and treatment may submit a complaint, preferably in writing.

2. Any person may submit a complaint if he/she has knowledge that a state law, standard, rule, regulation, correction order, or certification rule issued by the Department of Health and Hospitals has been violated.

C. Duty to Report. All incidents or allegations of abuse and/or neglect must be reported by telephone or FAX within 24 hours to DHH's Health Standards Section. This must be followed by a copy of the results of the facility's internal investigation within five working days. Complete investigative reports with all pertinent documents shall be maintained at the facility. Failure to submit this information timely could result in a deficiency and/or a sanction. Those who must make a report abuse and/or neglect are:

1. physicians or other allied health professionals;
2. social services personnel;
3. facility administration;
4. psychological or psychiatric treatment personnel;
5. registered nurses;
6. licensed practical nurses; and
7. direct care staff.

D. Penalties for Failure to Make Complaint. Any person who knowingly and willfully fails to report an abuse or neglect situation shall be fined not more than \$500 or imprisoned not more than two months or both. The same sanctions shall apply to an individual who knowingly and willingly files a false report. Penalties for committing cruelty or negligent

mistreatment to a resident of a health care facility shall be not more than \$10,000 or imprisoning with or without hard labor for more than 10 years, or both.

E. Where to Submit Complaint

1. A complaint can be filed as follows:

a. it may be submitted in writing to the Health Standards Section at Box 3767, Baton Rouge, LA 70821-3767; or

b. it may be made by calling Health Standards Section at 1-888-810-1819, or (225) 342-0082, and the FAX number (225) 342-5292.

c. In addition, it may be submitted to any local law enforcement agency.

2. DHH'S Referral of Complaints for Investigation

a. Complaints involving clients of ICF/MRs received by DHH shall be referred to the Health Standards Section.

b. If it has been determined that complaints involving alleged violations of any criminal law concerning a facility are valid, the investigating office of DHH shall furnish copies of the complaints for further investigation to the Medicaid Fraud Control Unit of the Louisiana Attorney General Office.

F. Disposition of Complaints. After the investigation DHH may take any of the following actions.

1. Valid Complaint with Deficiencies Written. The Department of Health and Hospitals shall notify the administrator who must provide an acceptable plan of correction as specified below.

a. If it is determined that a situation presents a threat to the health and safety of the client, the facility shall be required to take immediate corrective action. DHH may certify noncompliance, revoke or suspend the license, or impose sanctions.

b. In all other instances of violation, an expeditious correction, not to exceed 90 days, shall be required. If the provider is unable or unwilling to correct the violation, DHH may take any of the actions listed in Paragraph 1.a.

c. In cases of abuse and/or neglect, referral for appropriate corrective action shall be made to the Medicaid Fraud Control Unit of the Attorney General's Office.

2. Unsubstantiated Complaint. DHH shall notify the complainant and the facility of this finding.

3. Repeat Violations. When violations continue to exist after the corrective action was taken, the Department of Health and Hospitals may take any of the actions listed in Paragraph 1.a.

G. Informal Reconsideration. A complainant or a facility dissatisfied with any action taken by DHH's response to the complaint investigation may request an informal reconsideration as provided in R.S. 40:2009.11 et seq.

H. Retaliation by ICF/MR Facility. Facilities are prohibited from taking retaliatory action against complainants. Persons aware of retaliatory action or threats in this regard should contact DHH.

I. Tracking of Incidents. For each client who is involved in an accident or incident, an incident report shall be completed including the name, date, time, details of accident or incident, circumstances under which it occurred, witnesses and action taken.

1. Incidents or accidents involving clients must be documented in the client's record. These records should also contain all pertinent medical information.

2. The examples listed below are not all inclusive, but are presented to serve as a guideline to assist those facility employees responsible for reporting incident reports.

a. Suspicious Death. Death of a client or on-duty employee when there is suspicion of death other than by natural causes.

b. Abuse and/or Neglect. All incidents or allegations of abuse and/or neglect.

c. Runaways. Runaways considered to be dangerous to self or others.

d. Law Enforcement Involvement. Arrest, incarceration, or other serious involvement of residents with Law Enforcement Authorities.

e. Mass Transfer. The voluntary closing of a facility or involuntary mass transfer of residents from a facility.

f. Violence. Riot or other extreme violence.

g. Disasters. Explosions, bombings, serious fires.

h. Accidents/Injuries. Severe accidents or serious injury involving residents or on-duty employees caused by residents such as life threatening or possible permanent and/or causing lasting damage.

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HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:696 (April 1999).

Subchapter G. Admission Review

§10347. The Admission Process

Note: Federal regulations pertaining to this Section are 42 CFR 456.350-456.438. ICF/MRs will be subject to a review of each client's need for ICF/MR services.

A. Interdisciplinary Team (ID Team). Before admission to an ICF/MR, or before authorization for payment, an interdisciplinary team of health professionals will make a comprehensive medical, social and psychological evaluation of each client's need for care in the ICF/MR.

1. Other professionals as appropriate will be included on the team, and at least one member will meet the definition of Qualified Mental Retardation Professional (QMRP) as stated in these standards.

2. Appropriate participation of nursing services on this team should be represented by a Louisiana licensed nurse.

B. Exploration of Alternative Services. If the comprehensive evaluations recommend ICF/MR services for a client whose needs could be met by alternative services that are currently unavailable, the ICF/MR will enter this fact in the client's record and begin to look for alternative services.

C. ICF/MR Submission of Data

1. Evaluative data for medical certification for ICF/MR level of care will be submitted to the appropriate Regional Health Standards Office on each client. This will include the following information:

a. initial application;

b. applications for clients transferring from one ICF/MR to another;

- c. applications for clients transferring from an acute care hospital to an ICF/MR;
- d. applications for clients who are patients in a mental health facility; and
- e. applications for clients already in an ICF/MR program.

2. Time Frames for Submission of Data. A complete packet of admission information must be received by BHSF/HSS within 20 working days following the completion of the ISP for newly admitted clients.

- a. Notice within the 20-day time frame will also be required for readmissions and transfers.
- b. If an incomplete packet is received, denial of certification will be issued with the reasons(s) for denial.
- c. If additional information is subsequently received within the initial 20-working-day time frame, and the client meets all requirements, the effective date of certification is the date of admission.

d. If the additional information is received after the initial 20-working-day time frame and the client meets all requirements, the effective date of is no earlier than the date a completed packet is received by HSS.

3. Data may be submitted before admission of the client if all other conditions for the admission are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:697 (April 1999).

§10349. Requirements for Certification

The following documentation and procedures are required to obtain medical certification for ICF/MR Medicaid vendor payment. The documentation should be submitted to the appropriate HSS Regional Office.

1. Social evaluation:
 - a. must not be completed more than 90 days prior to admission and no later than date of admission; and
 - b. must address the following:
 - i. family, educational and social history including any previous placements;
 - ii. treatment history that discusses past and current interventions, treatment effectiveness, and encountered negative side effects;
 - iii. current living arrangements;
 - iv. family involvement, if any;
 - v. availability and utilization of community, educational, and other sources of support;
 - vi. habilitation needs;
 - vii. family and/or client expectations for services;
 - viii. prognosis for independent living; and
 - ix. social needs and recommendation for ICF/MR placement.
2. Psychological evaluation:
 - a. must not be completed more than 90 days prior to admission and no later than the date of admission; and
 - b. must include the following components:
 - i. comprehensive measurement of intellectual functioning;

- ii. a developmental and psychological history and assessment of current psychological functioning;
- iii. measurement of adaptive behavior using multiple informants when possible;
- iv. statements regarding the reliability and validity of informant data including discussion of potential informant bias;
- v. detailed description of adaptive behavior strengths and functional impairments in self-care, language, learning, mobility, self-direction, and capacity for independent living;
- vi. discussion of whether impairments are due to a lack of skills or noncompliance and whether reasonable learning opportunities for skill acquisition have been provided; and
- vii. recommendations for least restrictive treatment alternative, habilitation and custodial needs and needs for supervision and monitoring to ensure safety.

3. A psychiatric evaluation must be completed if the client has a primary or secondary diagnosis of mental illness, is receiving psychotropic medication, has been hospitalized in the past three years for psychiatric problems, or if significant psychiatric symptoms were noted in the psychological evaluation or social assessment. The psychiatric evaluation:

- a. shall not be completed more than 90 days prior to admission and no later than the date of admission;
- b. should include a history of present illness, mental status exam, diagnostic impression, assessment of strengths and weaknesses, recommendations for therapeutic interventions, and prognosis; and
- c. may be requested at the discretion of HSS to determine the appropriateness of placement if admission material indicates the possible need for psychiatric intervention due to behavior problems.

4. Physical, occupational, or speech therapy evaluation(s) may be requested when the client receives services or is in need of services in these areas.

5. An Individual Service Plan (ISP) developed by the interdisciplinary team, completed within 30 days of admission that describes and documents the following:

- a. habilitation needs;
- b. specific objectives that are based on assessment data;
- c. specific services, accommodations, and/or equipment needed to augment other sources of support to facilitate placement in the ICF/MR; and
- d. participation by the client, the parent(s) if the client is a minor, or the client's legal guardian unless participation is not possible or inappropriate.

Note: Document the reason(s) for ANY non-participation by the client, the client's parent(s), or the client's legal guardian.

6. Form 90-L (Request for Level of Care Determination) must be submitted on each admission or readmission. This form must:

- a. not be completed more than 30 days before admission and not later than the date of admission;
- b. be completed fully and include prior living arrangements and previous institutional care;
- c. be signed and dated by a physician licensed to practice in Louisiana. Certification will not be effective any

earlier than the date the Form 90-L is signed and dated by the physician;

d. indicate the ICF/MR level of care; and
e. include a diagnosis of mental retardation/developmental disability or related condition as well as any other medical condition.

7. Form 148 (Notification of Admission or Change):

a. must be submitted for each new admission to the ICF/MR;

b. must be submitted when there is a change in a client's status: death, discharge, transfer, readmission from a hospital;

c. for clients' whose application for Medicaid is later than date of admission, the date of application must be indicated on the form.

8. Transfer of a Client

a. Transfer of a Client Within an Organization

i. Form 148 must be submitted by both the discharging facility and the admitting facility. It should indicate the date the client was discharged from the transferring facility plus the name of the receiving facility and the date admitted.

ii. An updated individual service plan must be submitted from the discharging facility to the receiving facility. The previous plan can be used but must show any necessary revisions that the receiving facility ID team feel are appropriate and/or necessary.

iii. The receiving facility must submit minutes of an ID team meeting addressing the reason(s) for the transfer, the family and client's response to the move, and the signatures of the persons attending the meeting.

b. Transfer of a Client Not Within the Same Organization. Certification requirements involving the transfer of a client from one ICF/MR facility to another not within the same organization or network will be the same as for a new admission.

i. The discharging facility will notify HSS of the discharge by submitting Form 148 giving the date of discharge and destination.

ii. The receiving facility must follow all steps for a new admission.

9. Readmission of a Client Following Hospitalization

a. Form 148 must be submitted showing the date Medicaid billing was discontinued and the date of readmission to the facility.

b. Documentation must be submitted that specifies the client's diagnosis, medication regime, and includes the physician's signature and date. The documentation can be:

i. Form 90-L;

ii. hospital transfer form;

iii. hospital discharge summary; or

iv. physician's orders.

c. An updated ISP must be submitted showing changes, if any, as a result of the hospitalization.

10. Readmission of a Client Following Exhausted Home Leave Days

a. Form 148 must be submitted showing the date billing was discontinued and the date of readmission.

b. An updated ISP must be submitted showing changes, if any, as a result of the extended home leave.

11. Transfer of a Client From an ICF/MR Facility to a Nursing Facility. When a client's medical condition has deteriorated to the extent that they cannot participate in or benefit from active treatment and require 24-hour nursing care, the ICF/MR may request prior approval from HSS to transfer the client to a nursing facility by submitting the following information:

a. Form 148 showing that transfer to a nursing facility is being requested;

b. Form 90-L completed within 30 days prior to request for transfer indicating that nursing facility level of care is needed;

c. Level 1 PASARR completed within 30 days prior to request for transfer;

d. ID team meeting minutes addressing the reason for the transfer, the family and client's response to the move, and the signatures of the persons attending the meeting; and

e. any other medical information that will support the need for nursing facility placement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:698 (April 1999).

§10351. Audits

Note: The federal regulation which pertains to this Section is 42 CFR 447.202.

A. Each ICF/MR shall file an annual facility cost report, central office cost report, and cost report of cost for services provided to each residents eligible for extraordinary rate.

B. ICF/MRs shall be subject to financial and compliance audits.

C. All providers who elect to participate in the Medicaid Program shall be subject to audit by State or Federal regulators or their designees. Audit selection for the Department shall be at the discretion of DHH.

1. A representative sample of ICF/MR providers shall be fully audited to ensure the fiscal integrity of the program and compliance of providers with program regulations governing reimbursement.

2. Limited scope and exception audits shall also be conducted as determined by DHH or its designee.

3. DHH conducts desk reviews of all the cost reports received. DHH or its designee also conducts on-site audits of provider records and cost reports.

a. DHH or its designee seeks to maximize the number of on-site audited cost reports available for use in its cost projections although the number of on-site audits performed each year may vary.

b. Whenever possible, the records necessary to verify information submitted to DHH on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHH or its designee audit staff in the state of Louisiana.

D. Cost of Out-of-State Audits

1. When records are not available to DHH audit staff within Louisiana, the provider must pay the actual costs for DHH or its designee staff to travel and review the records out-of-state.

2. If a provider fails to reimburse DHH for these costs within 60 days of the request for payment, DHH may place a hold on the vendor payments until the costs are paid in full.

E. In addition to the exclusions and adjustments made during desk reviews and on-site audits, DHH may exclude or adjust certain expenses in the cost-report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur.

F. The facility shall retain such records or files as required by DHH's BHSF and shall have them available for inspection for three years from the date of service or until all audit exceptions are resolved, whichever period is longer.

G. If DHH's or its designee auditors determine that a facility's records are unauditible, the vendor payments may be withheld until the facility submits an acceptable plan of correction to reconstruct the records. Any additional costs incurred to complete the audit shall be paid by the provider. (Refer to §10357, Sanctions, regarding applicable sanctions.)

H. If a facility fails to submit corrective action plans in response to financial and compliance audit findings within 15 days after receiving the notification letter, vendor payment may be withheld. (Refer to §10357, Sanctions, for more information.)

I. If a facility fails to respond satisfactorily to DHH's request for information within 15 days after receiving the department's letter, vendor payment may be withheld. (Refer to §10357, Sanctions, for more information.)

J. If DHH's or its designee audit of the residents' Personal Funds Account indicates a material number of transactions were not sufficiently supported or material noncompliance, then DHH shall initiate a full scope audit of the account. The cost of the full scope audit shall be withheld from the vendor payments. (Refer to §10357, Sanctions and §10355, Appeals, for more information.)

K. The ICF/MR shall cooperate with the audit process by:

1. promptly providing all documents needed for review;
2. providing adequate space for uninterrupted review of records;
3. making persons responsible for facility records and cost report preparation available during the audit;
4. arranging for all pertinent personnel to attend the exit conference;
5. insuring that complete information is maintained in client's records; and
6. correcting areas of noncompliance with state and federal regulations immediately after the exit conference time limit of fifteen (15) days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:699 (April 1999).

§10353. Utilization Reviews

Note: Federal regulations pertaining to ICFs are found at 42 CFR 456.350 through 456.438.

A. If it is determined by HSS that continued stay is not needed, the client's attending physician or Qualified Mental Retardation Professional (QMRP) shall be notified within one working day and given two working days from the notification date to present his/her views before a final decision on continued stay is made.

B. If the attending physician or QMRP does not present additional information or clarification of the need for continued stay, the decision of the UR group is final.

C. If the attending physician or QMRP presents additional information or clarification, the need for continued stay is reviewed by the physician member(s) of the UR group in cases involving a medical determination.

D. The decision of the UR group is the final medical eligibility decision. Recourse for the client is to exercise his/her appeal rights according to the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:700 (April 1999).

§10355. Appeals

Note: Code of Federal Regulations that pertain to this Section are as follows: 42 CFR 431.151 through 431.154.

A. DHH reserves the right to reject a request for Title XIX participation, impose sanctions or terminate participation status when an ICF/MR:

1. fails to abide by the rules and regulations promulgated by DHH;
2. fails to obtain compliance or is otherwise not in compliance with Title VI of the Civil Rights Act;
3. engages in practice not in the best interest of Medicaid (Title XIX) clients;
4. has previously been sanctioned for violation of state and/or federal rules and regulations; or
5. has previously been decertified from participation as a Title XIX provider. Prior to such rejection or termination, DHH may conduct an Informal Reconsideration at the ICF/MR's request. The ICF/MR also has the right to an Administrative Appeal pursuant to the Administrative Procedure Act.

B. Informal Reconsideration. When an ICF/MR receives a written notification of adverse action and a copy of the findings upon which the decision was based, the ICF/MR may provide written notification to BHSF/HSS within 10 calendar days of receiving the notification, and request an Informal Reconsideration.

1. The ICF/MR may submit written documentation or request an opportunity to present oral testimony to refute the findings of DHH on which the adverse action is based.

2. DHH will review all oral testimony and documents presented by the ICF/MR and, after the conclusion of the Informal Reconsideration, will advise the ICF/MR in writing of the results of the reconsideration which may be that:

- a. the original decision has been upheld;
- b. the original decision has been modified; or
- c. the original decision has been reversed.

C. Evidentiary Hearing—General Requirements. The ICF/MR may also request an Administrative Appeal. To request such an appeal, the facility must submit their request in writing within 30 days of the receipt of the adverse action to the Bureau of Appeals, Box 4183, Baton Rouge, LA 70821-4183. The Bureau of Appeals will attempt to conduct the hearing within 120 days of the original notice of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:700 (April 1999).

§10357. Sanctions

A. Noncompliance. When ICF/MRs are not in compliance with the requirements set forth in the ICF/MR Standards for Payment, DHH may impose sanctions. Sanctions may involve:

1. withholding of vendor payments;
2. civil fines;
3. denial of payments for new admissions; or
4. nonfinancial measures such as termination of the ICF/MR's certification as a Title XIX provider.

B. Authority. Public Law 95-142, dated October 25, 1977, permits the federal government's Health Care Financing Administration (HCFA) to impose a fine and/or imprisonment of facility personnel for illegal admittance and retention practices. HCFA is also authorized to terminate an agreement with a Title XIX ICF/MR provider as a result of deficiencies found during their surveys, which are re-reviews of the state's surveys. Furthermore, the federal government's Office of Inspector General (OIG) is authorized to terminate an agreement with a Title XIX ICF/MR provider for willful misrepresentation of financial facts or for not meeting professionally recognized standards of health care.

C. Special Staffing Requirements. When the secretary of DHH determines that additional staffing or staff with specific qualifications would be beneficial in correcting deficient practices, DHH may require a facility to hire additional staff on a full-time or consultant basis until the deficient practices have been corrected. This provision may be invoked in concert with, or instead of, the sanctions cited below.

D. Withholding of Vendor Payments. DHH may withhold vendor payments in whole or in part in the following situations, which are not all inclusive.

1. Delinquent Staffing Report. When the ICF/MR provider fails to timely submit a required, completed staffing report. After DHH notifies the provider of the delinquent report, vendor payment may be withheld until the completed report is received.

2. Unapproved Staffing Shortage. When a staffing report indicates an unapproved staffing shortage, vendor payment may be withheld until staffing is brought into compliance.

3. Incorrect/Inappropriate Charges. When DHH determines that the ICF/MR provider has incorrectly or

inappropriately charged clients, families, or responsible parties, or there has been misapplication of client funds, vendor payment may be withheld until the provider does the following:

- a. makes restitution; and
- b. submits documentation of such restitution to BHSF's Institutional Reimbursement Section.

4. Delinquent Cost Report. When an ICF/MR provider fails to submit a cost report within 90 days from the fiscal year end closing date, a penalty of 5 percent of the total monthly payment for the first month and a progressive penalty of 5 percent of the total monthly payment for each succeeding month may be levied and withheld from the vendor's payment for each month that the cost report is due, not extended, and not received. The penalty is nonrefundable.

Note: DHH's Institutional Reimbursement Section may grant a 30-day extension of the 90-day time limit, when requested by the ICF/MR provider, if just cause has been established. Extensions beyond 30 days may be approved for situations beyond the ICF/MR provider's control.

5. Cost Reports Errors. Cost reports errors greater than 10 percent in the aggregate for the ICF/MR provider for the cost report year may result in a maximum penalty of 10 percent of the current per diem rate for each month the cost report errors are not correct. The penalty is nonrefundable.

6. Corrective Action for Audit Findings. Vendor payments may be withheld when an ICF/MR facility fails to submit corrective action in response to financial and compliance audit findings within 15 days after receiving the notification letter until such time compliance is achieved.

7. Failure to Respond or Adequately Respond to Requests for Financial/Statistical Information. When an ICF/MR facility fails to respond or adequately respond to requests from DHH for financial and statistical information within 15 days after receiving the notification letter, vendor payments may be withheld until such time the requested information is received.

8. Insufficient Medical Recertification. When an ICF/MR provider fails to secure recertification of a client's need for care and services, the vendor's payment for that individual may be withheld or recouped until compliance is achieved.

9. Inadequate Review/Revision of Plan of Care (IHP). When an ICF/MR provider repeatedly fails to ensure that an adequate plan of care for a client is reviewed and revised at least at required intervals, the vendor's payment may be withheld or recouped until compliance is achieved.

10. Failure to Submit Response to Survey Reports. When an ICF/MR provider fails to submit an acceptable response within 30 days after receiving a Survey Report from DHH, HCFA, OIG and the legislative auditor, vendor payments may be withheld until an adequate response is received, unless the appropriate agency extends the time limit.

11. Corrective Action on Complaints. When an ICF/MR fails to submit an adequate corrective action plan in response to a complaint within seven days after receiving the complaint report, vendor payments may be withheld until an adequate corrective action plan is received, unless the time limit is extended by the DHH.

12. Delinquent Utilization Data Requests. Facilities will be required to timely submit utilization data requested by the

DHH. Providers will be given written notice when such utilization data has not been received by the due date. Such notice will advise the provider of the date the utilization data must be received by to avoid withholding of vendor payments. The due date will never be less than 10 days from the date the notice is mailed to the provider. If the utilization data is not received by the due date provided in the notice, the medical vendor's payment will be withheld until the utilization data is received.

13. Termination or Withdrawal from the Medicaid Program. When a provider is terminated or withdraws from the Medicaid Program, vendor payment will be withheld until all programmatic and financial issues are resolved.

E. Civil Fines. Louisiana R.S. 40:2199 authorized DHH to impose monetary sanctions on those health care facilities found to be out of compliance with any state or federal law or rule concerning the operation and services of the health care provider.

1. Any ICF/MR found to be in violation of any state or federal statute, regulation, or any Department of Health and Hospitals (DHH) rule adopted pursuant to the Act governing the administration and operation of the facility may be sanctioned as provided in the schedule of fines listed under Paragraph 2 below.

a. Repeat Violation. A *repeat violation* is defined as a violation of a similar nature as a previously cited violation that occurs within 18 months of the previously cited violation. DHH has the authority to determine when a violation is a *repeat violation*.

b. Opening or Operating a Facility Without a License. The opening or operation of a facility without a license or registration will be a misdemeanor, punishable upon conviction by a fine of not less than \$1,000 nor more than \$5,000.

i. Each day's violations will constitute a separate offense.

ii. On learning of such an operation, DHH will refer the facility to the appropriate authorities for prosecution.

c. Any ICF/MR found to have a violation that poses a threat to the health, safety, rights, or welfare of a resident or client may be liable for civil fines in addition to any criminal action that may be brought under other applicable laws.

2. Description of Violations and Applicable Civil Fines

a. Class A Violations. A Class A violation is a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance or operation of a facility that results in death or serious harm to a resident or client.

i. Examples of Class A violations include, but are not limited to, the following:

(a). acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in the death of a resident or client; and

(b). acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in serious harm to a resident or client.

ii. Civil fines for Class A violations may not exceed:

(a). \$2,500 for the first violation; or

(b). \$5,000 per day for repeat violations.

b. Class B Violations. A Class B violation is a violation of rule or regulation in which a condition or occurrence relating to the maintenance or operation of a facility is created that results in the substantial probability that death or serious harm to the client or resident will result if the condition or occurrence remains uncorrected.

i. Examples of Class B violations include, but are not limited to, the following:

(a). medications or treatments improperly administered or withheld;

(b). lack of functioning equipment necessary to care for clients;

(c). failure to maintain emergency equipment in working order;

(d). failure to employ a sufficient number of adequately trained staff to care for clients; and

(e). failure to implement adequate infection control measures.

ii. Civil fines for Class B violations may not exceed:

(a). \$1,500 for the first violation; or

(b). \$3,000 per day for repeat violations.

c. Class C Violations. A Class C violation is a violation of a rule or regulation in which a condition or occurrence relating to the maintenance or operation of the facility is created that threatens the health, safety, or welfare of a client or resident.

i. Examples of Class C violations include, but are not limited to, the following:

(a). failure to perform treatments as ordered by the physician;

(b). improper storage of poisonous substances;

(c). failure to notify physician and family of changes in condition of the client or resident;

(d). failure to maintain equipment in working order;

(e). inadequate supply of needed equipment;

(f). lack of adequately trained staff necessary to meet clients' needs; and

(g). failure to adhere to professional standards in giving care to the client.

ii. Civil fines for Class C violations may not exceed:

(a). \$1,000 for the first violation;

(b). \$2,000 per day for repeat violations.

d. Class D Violations. Class D violations are violations of rules or regulations related to administrative and reporting requirements that do not threaten the health, safety, rights, or welfare of a client or resident.

i. Examples of Class D violations include, but are not limited to, the following:

(a). failure to submit written reports of accidents;

(b). failure to timely submit a Plan of Correction;

(c). falsification of a record; and,

(d). failure to maintain clients financial records as required by rules or regulations.

- ii. Civil fines for Class D violations may not exceed:
 - (a). \$100 for the first violation;
 - (b). \$250 per day for repeat violations.
- e. Class E Violations
 - i. Class E violations occur when a facility fails to submit a statistical or financial report in a timely manner when such a report is required by rule or regulation.
 - ii. Civil fines for Class E violations may not exceed:
 - (a). \$50 for the first violation;
 - (b). \$100 per day for repeat violations.
- f. Maximum Amount for a Civil Fine
 - i. The aggregate fines assessed for violations determined in any one month may not exceed \$10,000 for a Class A and Class B violations.
 - ii. The aggregate fines assessed Class C, Class D, and Class E violations determined in any one month may not exceed \$5,000.
- g. DHH will have the authority to determine whether a violation is a repeat violation and sanction the provider accordingly. Violations may be considered repeat violations by DHH when the following conditions exist:
 - i. when DHH has established the existence of a violation as of a particular date and the violation is one that may be reasonably expected to continue until corrective action is taken, DHH may elect to treat said continuing violation as a repeat violation subject to appropriate fines for each day following the date on which the initial violation is established, until such time as there is evidence that the violation has been corrected; or
 - ii. when DHH has established the existence of a violation and another violation that is the same or substantially similar to the cited violation occurs within 18 months, the second and all similar subsequent violations occurring within the 18-month time period will be considered repeat violations and sanctioned accordingly.

3. Notice and Appeal Procedure

- a. When DHH imposes a sanction on a health care provider, it will give the provider written notice of the imposition. The notice will be given by certified mail and will include the following:
 - i. The nature of the violation(s) and whether the violation(s) is classified as a repeat violation;
 - ii. The legal authority that established the violation(s);
 - iii. The civil fine assessed for each violation;
 - iv. Inform the administrator of the facility that the facility has 10 days from receipt of the notice within which to request an informal reconsideration of proposed sanction;
 - v. Inform the administrator of the facility that the facility has 30 days from receipt of the notice within which to request an administrative appeal of the proposed sanction and that the request for an informal reconsideration does not extend the time limit for requesting an administrative appeal; and
 - vi. Inform the administrator of the facility that the consequences of failing to request an informal reconsideration and/or an administrative appeal will be that DHH's decision is

final and that no further administrative or judicial review may be had.

b. The provider may request an Informal Reconsideration of DHH's decision to impose a civil fine. This request must be written and made to DHH within 10 days of receipt of the notice of the imposition of the fine.

i. This reconsideration will be conducted by designated employees of DHH who did not participate in the initial decision to recommend imposition of a sanction.

ii. Oral presentation can be requested by the provider representative, and if requested, will be made to the designated employees.

iii. Reconsideration will be made on the basis of documents and oral presentations made by the provider to the designated employees at the time of the reconsideration.

(a). Correction of the deficient practice for which the sanction was imposed will not be the basis of the reconsideration.

(b). The designated employees will only have the authority to confirm, reduce or rescind the civil fine.

iv. DHH will notify the provider of the results of the reconsideration within 10 working days after the oral presentation.

v. This process is not in lieu of the administrative appeal and does not extend the time limits for filing an administrative appeal.

c. The facility may request an administrative appeal. If an administrative appeal is requested in a timely manner, the appeal will be held as provided in the Administrative Procedure Act (R.S. 49:950 et seq.) An appeal bond will be posted with the Bureau of Appeals as provided in R.S. 40:2199(D) or the provider may choose to file a devolutive appeal. A devolutive appeal means that the civil fine must be paid in full within 10 days of filing the appeal.

d. The provider may request judicial review of the administrative appeal decision as provided in the Administrative Procedure Act.

4. Collection of Fines

- a. Fines are final when:
 - i. an appeal is not requested within the specified time limits;
 - ii. the facility admits the violations and agrees to pay the fine; or
 - iii. the administrative hearing affirms DHH's findings of violations and time for seeking judicial review has expired.

b. When civil fines become final, they will be paid in full within 10 days of their commencement unless DHH allows a payment schedule in light of documented financial hardship. Arrangements with DHH for a payment schedule must commence within 10 days of the fines becoming final. Interest will begin to accrue at the current judicial rate on the day the fines become final.

c. If payment of assessed fines is not received within the prescribed time period after becoming final and the provider is a Medicaid provider, DHH will deduct the full amount plus the accrued interest from money otherwise due to the provider as Medicaid reimbursement in its next (quarterly or monthly) payment. If the provider is not a Medicaid

provider, DHH will institute civil actions as necessary to collect fines due.

d. No provider may claim imposed fines or interest as reimbursable costs, nor increase charges to residents, clients, or patients as a result of such fines or interest.

e. Civil fines collected will be deposited in the Health Care Facility Fund maintained by the state treasury.

F. Termination of Certification (Decertification) of an ICF/MR

Note: Federal regulations pertaining to this Subsection are 42 CFR 442.12- 442.117.

An ICF/MR may voluntarily or involuntarily lose its participating status in the Medical Assistance Program.

1. Reasons for a Decertification of an ICF/MR

a. The ICF/MR may voluntarily withdraw from the program for reasons of its own. The owner and administrator will submit a written notice of withdrawal to the DHH's HSS at least 60 days in advance.

b. A new owner may decide against participation in the program. A written 60-day notice of withdrawal will be submitted to DHH's HSS.

c. DHH may decertify an ICF/MR for failure to comply with Title XIX standards, thus canceling the facility's provider agreement.

d. DHH may decertify an ICF/MR if deficiencies pose immediate jeopardy to the client's health, safety, rights, or welfare.

e. The ICF/MR may allow its provider agreement to expire. A written 60-day advance notice of withdrawal will be submitted to the DHH's HSS.

f. DHH may cancel the provider agreement if and when it is determined that the ICF/MR is in material breach of the contract.

2. Recertification of an Involuntarily Decertified ICF/MR. After involuntary decertification, an ICF/MR cannot participate as a Medical Assistance provider unless the following conditions are met:

a. the reasons for the decertification or nonrenewal of the contract no longer exist;

b. reasonable assurance exists that the factors causing the decertification will not recur;

c. the ICF/MR demonstrates compliance with the required standards for a 60-day period prior to reinstatement in a participating status; and

d. a professional medical review reports that clients are receiving proper care and services.

3. Denial of Payments for New Admissions

a. New Admissions. New admissions refer to the admission of a person who has never been a Title XIX client in the ICF/MR or, if previously admitted, had been discharged or had voluntarily left the ICF/MR. This term does not include the following:

i. individuals who were in the ICF/MR before the effective date of denial of payment for new admissions, even if they become eligible for Title XIX after that date.

ii. individuals who, after a temporary absence from the ICF/MR, are readmitted to beds reserved for them in accordance with the admission process.

b. Basis for Denial of Payment. DHH may deny payment for new admissions to an ICF/MR that no longer meets applicable requirements as specified in these standards.

i. ICF/MR's deficiencies do not pose immediate jeopardy (serious threat). If DHH finds that the ICF/MR's deficiencies do not pose immediate jeopardy to clients' health, safety, rights, or welfare, DHH may either terminate the ICF/MR's provider agreement or deny payment for new admissions.

ii. ICF/MR's deficiencies do pose immediate jeopardy (serious threat). If DHH finds that the ICF/MR's deficiencies do pose immediate jeopardy to clients' health, safety, rights, or welfare, and thereby terminates the ICF/MR's provider agreement, DHH may additionally seek to impose the denial of payment for new admissions.

c. DHH Procedures. Before denying payments for new admissions, DHH will be responsible for the following:

i. providing the ICF/MR a time frame of up to 60 days to correct the cited deficiencies and comply with the standards for ICF/MRs;

ii. giving the ICF/MR notice of the intent to deny payment for new admissions and an opportunity to request an Informal Reconsideration if the facility has not achieved compliance at the end of the 60-day period;

iii. providing an informal hearing if requested by the ICF/MR that included the following:

(a). giving the ICF/MR the opportunity to present before a State Medicaid official not involved in the initial determination, evidence or documentation, in writing or in person, to refute the decision that the ICF/MR is out of compliance with the applicable standards for participation; and

(b). submitting a written decision setting forth the factual and legal basis pertinent to a resolution of the dispute.

iv. providing the facility and the public at least 15 days advance notice of the effective date of the sanction and reasons for the denial of payments for new admissions should the informal hearing decision be adverse to the ICF/MR.

d. Duration of Denial of Payments and Subsequent Termination

i. Period of Denial. The denial of payments for new admissions will continue for 11 months after the month it was imposed unless, before the end of that period, DHH determines:

(a). the ICF/MR has corrected the deficiencies or is making a good faith effort to achieve compliance with the standards for ICF/MR participation; or

(b). the deficiencies are such that it is now necessary to terminate the ICF/MR's provider agreement.

ii. Subsequent Termination. DHH must terminate an ICF/MR's provider agreement under the following conditions:

(a). upon finding that the ICF/MR has been unable to achieve compliance with the standards for participation during the period that payments for new admissions had been denied;

(b). effective the day following the last day of the denial of payments;

(c). in accordance with the procedures for appeal of termination set forth in §10355, Appeals.

4. Examples of Situations Determined to Pose Immediate Jeopardy (Serious Threat). Listed below are some examples of situations determined to pose immediate jeopardy (serious threat) to the health, safety, rights, and welfare of clients in ICF/MR. These examples are not intended to be all inclusive. Other situations adversely affecting clients could constitute sufficient basis for the imposition of sanctions.

a. Poisonous Substances. An ICF/MR fails to provide proper storage of poisonous substances, and this failure results in death of or serious injury to a client or directly threatens the health, safety, or welfare of a client.

b. Falls. An ICF/MR fails to maintain required direct care staffing and/or a safe environment as set forth in the regulations, and this failure directly causes a client to fall resulting in death or serious injury or directly threatens the health, safety, or welfare of a client.

Examples: Equipment not properly maintained or personnel not responding to a client's request for assistance.

c. Assaults

i. By Other Clients. An ICF/MR fails to maintain required direct care staffing and fails to take measures when it is known that a client is combative and assaultive with other clients, and this failure causes an assault upon another client, resulting in death or serious injury or directly threatens the health, safety, and welfare of another client.

ii. By Staff. An ICF/MR fails to take corrective action (termination, legal action) against an employee who has a history of client abuse and assaults a client causing death or the situation directly threatens the health, safety, and welfare of a client.

d. Physical Restraints Results in Permanent Injury. ICF/MR personnel improperly apply physical restraints contrary to published regulations or fail to check and release restraints as directed by regulations or physician's written instructions, and such failure results in permanent injury to a client's extremity or death or directly threatens the health, safety and welfare of a client.

e. Control of Infections. An ICF/MR fails to follow or meet infection control standards as ordered in writing by the physician, and this failure results in infections leading to the death of or serious injury to a client or directly threatens the health, safety, and welfare of a client.

f. Medical Care

i. An ICF/MR fails to secure proper medical assistance for a client, and this failure results in the death of or serious injury to the client.

ii. A client's condition declined and no physician was informed, and this failure directly threatens the health, safety, or welfare of the client. This would also include the following:

(a). failure to follow up on unusual occurrences of negative findings;

(b). failure to obtain information regarding appropriate care before and after a client's hospitalization;

(c). failure to timely hospitalize a client during a serious illness.

iii. ICF/MR personnel have not followed written physician's orders, and this failure directly threatens the health,

safety, or welfare of a client. This includes failure to fill prescriptions timely.

g. Natural Disaster/Fire. An ICF/MR fails to train its staff members in disaster/fire procedures as required by state rules and regulations for licensing of ICF/MRs or an ICF/MR fails to meet staffing requirements, and such failures result in the death of or serious injury to a client during natural disaster, fire or directly threatens the health, safety, or welfare of a client.

h. Decubitus Ulcers (Bed Sores). An ICF/MR fails to follow decubitus ulcer care measures in accordance with a physician's written orders, and such failure results in the death of, serious injury to, or discomfort of the client or directly threatens the health, safety, and welfare of a client.

i. Elopement. An ICF/MR fails to provide necessary supervision of its clients or take measures to prevent a client with a history of elopement problems from wandering away and such failure results in the death of or serious harm to the client or directly threatens the health, safety, and welfare of the client. Examples of preventive measures include, but are not limited to:

i. documentation that the elopement problem has been discussed with the client's family and the Interdisciplinary Team; and,

ii. that personnel have been trained to make additional efforts to monitor these clients.

j. Medications

i. An ICF/MR knowingly withholds a client's medications and such actions results in the death of or serious harm to the client or directly threatens the health, safety, and welfare of the client.

Note: The client does have the right to refuse medications. Such refusal must be documented in the client's record and brought to the attention of the physician and ID team.

ii. medication omitted without justification;

iii. excessive medication errors;

iv. improper storage of narcotics or other prescribed drugs, mishandling of drugs or other pharmaceutical problems.

k. Environment/Temperature. An ICF/MR fails to reasonably maintain its heating and air-conditioning system as required by regulations, and this failure results in the death of, serious harm to, or discomfort of a client or creates the possibility of death or serious injury. Isolated incidents of breakdown or power failure will not be considered immediate jeopardy.

l. Improper Treatments

i. ICF/MR personnel knowingly perform treatment contrary to a physician's order, and such treatment results in the death of or serious injury to the client or directly threatens the health, safety, and welfare of the client.

ii. An ICF/MR fails to feed clients who are unable to feed themselves as set forth in physician's instructions.

Note: Meals should be served at the required temperature.

iii. An ICF/MR fails to obtain a physician's order for use of chemical or physical restraints; the improper application of a physical restraint; or failure of facility personnel to check and release the restraints periodically as specified in state regulations.

m. Life Safety. An ICF/MR knowingly fails to maintain the required Life Safety Code System such as the following:

i. properly functioning sprinklers, fire alarms, smoke sensors, fire doors, electrical wiring;

ii. practice of fire or emergency evacuation plans; or

iii. stairways, hallways and exits free from obstruction; and noncompliance with these requirements results in the death of or serious injury to a client or directly threatens the health, safety, and welfare of a client.

n. Staffing. An ICF/MR consistently fails to maintain minimum staffing that directly threatens the health, safety, or welfare of a client. Isolated incidents where the facility does not maintain staffing due to personnel calling in sick or other emergencies are excluded.

o. Dietary Services. An ICF/MR fails to follow the minimum dietary needs or special dietary needs as ordered by a physician, and failure to meet these dietary needs threatens the health, safety or welfare of a client. The special diets must be prepared in accordance with physician's orders or a diet manual approved by the American Dietary Association.

p. Sanitation. An ICF/MR fails to maintain state and federal sanitation regulations, and those violations directly affect and threaten the health, safety, or welfare of a client.

Examples: Strong odors linked to a lack of cleanliness; Dirty buildup on floors and walls; Dirty utensils, glasses and flatware; Insect or rodent infestation

q. Equipment and Supplies. An ICF/MR fails to provide equipment and supplies authorized in writing by a physician as necessary for a client's care, and this failure directly threatens the health, safety, welfare or comfort of a client.

r. Client Rights

i. An ICF/MR violates its clients' rights and such violations result in the clients' distress to such an extent that their psychosocial functions are impaired or such violations directly threaten their psychosocial functioning. This includes psychological abuse.

ii. The ICF/MR permits the use of corporal punishment.

iii. The ICF/MR allows the following responses to clients by staff members and employment supervisors:

(a). physical exercise or repeated physical motions;

(b). excessive denial of usual services;

(c). any type of physical hitting or other painful physical contacts except as required by medical, dental, or first aid procedures necessary to preserve the individual's life or health;

(d). requiring the individual to take on an extremely uncomfortable position;

(e). verbal abuse, ridicule, or humiliation;

(f). requiring the individual to remain silent for a long period of time;

(g). denial of shelter, warmth, clothing or bedding;

or

(h). assignment of harsh physical work.

iv. The ICF/MR fails to afford the client with the opportunity to attend religious services.

v. The ICF/MR denies the client the right to bring

his or her personal belongings to the program, to have access, and to acquire belongings in accordance with the service plan.

vi. The ICF/MR denies a client a meal without a doctor's order.

vii. The ICF/MR does not afford the client with suitable supervised opportunities for interaction with members of the opposite sex, except where a qualified professional responsible for the formulation of a particular individual's treatment/habilitation plan writes an order to the contrary and explains the reasons.

Note: The secretary of DHH has the final authority to determine what constitutes "immediate jeopardy" or serious threat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:701 (April 1999).

David W. Hood
Secretary

9904#027

RULE

Department of Insurance Office of the Commissioner

Regulation 65—Bail Bond Licensing Requirements/Bounty Hunter (LAC 37:XIII.Chapter 49)

This Regulation is authorized by LA. R.S. 22:3, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3 and 22:1191(B).

This Regulation requires the mandatory licensing of all unlicensed bounty hunters conducting apprehensions or surrenders on behalf of insurance companies.

This Regulation establishes guidelines for premium fee administration, transacting an apprehension or surrender of a principal, bond surrender due to nonpayment of premium, precensing for applicants and continuing education for licensed agents or solicitors. Additionally the Regulation outlines the hearing process and fines as delineated in the Louisiana Insurance Code. Definitions and related matters are also addressed in the Regulation. This regulation applies to all licensed bail agents or solicitors and unlicensed bounty hunters that engage in the apprehension or surrender of a principal.

This Regulation enables the Commissioner of Insurance to regulate the bail bond industry and eliminate and penalize those individuals for unsafe practices, which are a threat to the public's health, safety, and welfare.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 49. Regulation 65—Bail Bond Licensing Requirements/Bounty Hunter

§4901. Purpose

The purpose of this regulation is to establish guidelines for licensing, for transacting an apprehension or surrender of a

principal, prelicensing for applicants and continuing education for licensed agents or solicitors, bail bonds, fines and hearings, definitions and related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:706 (April 1999).

§4903. Definitions

The following terms when used in this Chapter shall have the following meanings:

Bail Bond Agent—shall mean a person, corporation, or partnership which holds an insurance agent or solicitor license and who is authorized to provide surety in Louisiana, and/or engages in the apprehension and return of persons who are released on bail or who failed to appear at any state of the proceedings to answer the charge before the court in which they may be prosecuted. For purposes of this regulation a bail recovery agent is synonymous with a bail bond agent.

Bail Enforcement—means the apprehension or surrender of a principal by a natural person who is released on bail or who has failed to appear at any state of the proceedings to answer the charge before the court in which he may be prosecuted.

Bail Solicitor—means an individual who holds an insurance license and is authorized by a duly licensed bail bond agent to solicit contracts of bail bond insurance and engages in bail enforcement, solely on behalf of the licensed bail bond agent.

Commissioner—means the Louisiana Commissioner of Insurance.

Department—means the Louisiana Department of Insurance.

Insurer—means any domestic or foreign insurance corporation or association engaged in the business of insurance or suretyship which has qualified to transact surety or casualty business in this state.

Surrender—as defined by the L.A.-CCRP Article 345.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:707 (April 1999).

§4905. Bail Recovery Agent License Requirements for Louisiana

A. In order to engage, to transact, or assist in the apprehension or surrender of a principal, a person must be a duly licensed bail bond agent or solicitor, pursuant to Part XXIV and Part XXV-A of the Louisiana Insurance Code.

1. Prelicensing

a. On and after May 1, 1999, all persons applying for a bail bond agent or solicitor license must complete 8 hours of supervised instruction approved by the department, four (4) hours of which, must be instruction in bail enforcement.

2. Continuing Education Program

a. Persons holding a valid bail bond agent or solicitor license must complete 12 hours of a continuing education program, approved by the department, every two- year licensing period, four (4) hours of which must be instruction in bail enforcement. On or before January 1st of every odd

numbered year, all duly licensed bail bond agents shall have completed 12 hours of continuing education described in this section.

3. On and after May 1, 2000, no person shall engage in the bail bond insurance business, including enforcement and bail recovery activities, unless such person is duly licensed bail bond agent or solicitor pursuant to Part XXIV and Part XXV-A of the Louisiana Insurance Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:707 (April 1999).

§4907. Bail Recovery Persons License Requirement from Other States

Bail Recovery persons from other states must be duly authorized to transact bail enforcement or be a licensed bail bond agent in the state where the bond was written and shall act in association with a local bail agent duly licensed by the Louisiana Department of Insurance to transact bail enforcement in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:707 (April 1999).

§4909. Out of State Bail Enforcement Procedure and Notification Requirements

A. In order for a bail recovery person from another state to transact a surrender or apprehension of a principal in Louisiana, the following shall be done.

1. Before conducting surrender or apprehension of a principal, the bail recovery person(s) from other states shall notify the local law enforcement.

2. Bail recovery persons from other states must have in their possession certified copies of material needed to identify the principal. Said materials shall be:

a. a judgement of bond forfeiture or court order of failure to appear and/or certified copy of bond and/or the agent's duly executed copy of the contract;

b. a photograph of the principal; and

c. documentation reflecting that person is duly authorized to transact bail enforcement by the state where the bond was written.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:707 (April 1999).

§4911. In State Bail Enforcement Procedure and Notification Requirement

A. In order to transact a surrender or apprehension of a principal, the following shall be done.

1. Before conducting a surrender or apprehension of a principal, the bail bond agent or solicitor shall notify the local law enforcement in the parish or city where the principal is sought unless exigent circumstances exist.

2. The bail bond agent or solicitor shall be required to wear identifying clothing before transacting a surrender or an apprehension in a private residence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:707 (April 1999).

§4913. Prohibited Acts

A. No licensed bail agent or solicitor shall improperly withhold, misappropriate, fail to timely remit premiums and reports of bonds written, or convert to one's own use any monies belonging to principals, sureties and underwriters, or others possessed in the course of the business of insurance.

B. No licensed bail agent or solicitor shall perform bail enforcement in pursuit of any principal released on bail for nonpayment of premium. The surrender of a principal in violation of this subsection shall entitle the principal to the return of any premium paid.

C. No licensed bail agent or solicitor shall remove or have removed any bail bond power of attorney from the clerk of court or sheriff.

D. No licensed bail agent or solicitor shall transact or engage in the surrender or apprehension of a principal with the assistance of an unlicensed person.

E. No commercial surety shall fail to timely pay bond forfeiture claims that meet the requirements of L.A.-R.S. 22:658.1A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:708 (April 1999).

§4915. Enforcement of Regulation

A. The Commissioner is vested with the authority to enforce this Regulation. The Department may conduct investigations or request other state, parish or local officials to conduct investigations.

B.1. Violations of this Section are governed by Part XXIV (Qualification and License Requirements for Insurance Agents, Brokers, Surplus Lines Brokers and Solicitors) and XXVI (Unfair Trade Practices) of the Louisiana Insurance Code.

2. The commissioner shall impose penalties, sanctions or fines as delineated in Part XXIV and XXVI of the Louisiana Insurance Code. The Commissioner may seek contained herein that results in a public harm.

C. The Commissioner may promulgate such rules and regulations as may be deemed necessary for the enforcement of this regulation. The Department shall impose penalties, sanctions or fines as delineated in the Louisiana Insurance Code and collect such fines as necessary for the enforcement of such rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:708 (April 1999).

§4917. Effective Date

This regulation shall become effective on final publication in the April 1999 *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:7, 22:10, 22:658.1, 22:1065.1, 22:1113, 22:1404.3, 22:1191(B), 22:1211, and 22:1214.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 25:708 (April 1999).

James H. "Jim" Brown
Commissioner of Insurance

9904#054

RULE

Department of Social Services Office of Community Services

Homeless Trust Fund (LAC 48:I.Chapter 18)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Department of Social Services amends the existing rule, originally promulgated in the *Louisiana Register*, Volume 21, pages 401-402, (April 1995) establishing a procedure to disburse funds from the Louisiana Homeless Trust Fund. The amended rule deletes references to the Homeless Trust Fund Advisory Council, which was abolished by Act 1116 of the 1997 Legislature, and solely authorizes the Department of Social Services to implement and oversee the disbursement process for the Homeless Trust Fund. The amended rule also repeals §1813, which required the retention of a minimum residual amount in the Trust Fund, in order to allow all remaining trust fund monies to be disbursed in full. In October, 1995, under provisions of R.S. 47:120.37, the Homeless Trust Fund was removed from the donation schedule of the state income tax return, terminating revenues from this source for replenishment of the Trust Fund, and obviating the need for retention of a funding reserve.

The Homeless Trust Fund rule is hereby amended to incorporate and substitute the revised provisions stated below.

Title 48

PUBLIC HEALTH

Part I. General Administration

Chapter 18. Homeless Trust Fund

§1801. Definitions

A. In this Chapter:

DSS—means the Department of Social Services (Office of Community Services).

Fund—means the Louisiana Homeless Trust Fund established by R.S. 46:591 through 46:595.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:708 (April 1999).

§1803. Application Requests

A. To receive an application, an organization that aids the homeless must submit a written request to DSS containing the following information:

1. name of the organization;
2. mailing address of the organization;
3. phone number of the organization;
4. contact person within the organization; and
5. proof of the organization's nonprofit and tax exempt status or of nonprofit application pending.

B. An organization that submits an application request will be added to DSS's mailing list and DSS shall mail the organization information about application requirements and deadlines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:708 (April 1999).

§1805. Application Requirements and Deadlines

A. The application for funds must contain:

1. name and mailing address of the organization;
2. names and addresses of the organization's Board of Directors;
3. certification of the organization's nonprofit and tax exempt status or of nonprofit application pending;
4. brief history of the organization and its programs;
5. description of the proposed use of the requested funds;
6. description of the unmet needs of the homeless in the organization's community, including the source of the information;
7. itemized budget and budget justification for the Trust Fund proposal;
8. summary of organization's annual budget and sources of income;
9. documentation of the availability of matching funds for the proposal.

B. DSS will issue solicitations for grant applications after the end of the state fiscal year when the balance in the Fund is determined. The solicitation for grant applications will outline application deadlines and describe the eligible projects that DSS will fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:709 (April 1999).

§1807. Review of Applications

A. DSS will review complete applications in the order the applications are received.

B. DSS shall evaluate each application according to the following factors:

1. the extent to which the proposal meets the needs of the homeless in the organization's service community, as identified by the most recent report of the Louisiana Interagency Council on the Homeless;
2. the extent to which the organization requires Homeless Trust Fund monies as an equivalent match for other homeless assistance funding;
3. the demonstrated success of the program in meeting the needs of the homeless, if the proposal concerns an existing program;
4. the extent to which the proposal provides for direct services or housing needs, rather than administrative services; and
5. other factors as identified in DSS's solicitation for grant applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:709 (April 1999).

§1809. Notification and Appeals

A. DSS shall notify applicants of award decisions no later than 30 days after the date of DSS's decision.

B. An organization shall notify DSS in writing and by mail of whether the organization accepts the award no later than 30 days after the date the organization received DSS's notification.

C. DSS shall publish in the *Louisiana Register* a list of all projects funded during the previous state fiscal year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:709 (April 1999).

§1811. Emergency Grants

At any time, DSS may authorize an emergency grant of up to \$2,000 to an organization that aids the homeless, as long as funding is available. A request for an emergency grant must state the immediate nature of the request and comply with §1805.A of this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), amended LR 25:709 (April 1999).

§1813. Residual Funds in the Homeless Trust Fund

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:591 et seq.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 21:401 (April 1995), repealed LR 25:709 (April 1999).

Madlyn Bagneris
Secretary

9904#040

RULE

**Department of Social Services
Office of Family Support**

Family Independence Temporary Assistance Program
(FITAP)—Earned Income Deductions
(LAC 67:III.1149)

The Department of Social Services, Office of Family Support, has amended the *Louisiana Administrative Code*, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP).

Pursuant to the authority granted to the Department by the Louisiana Temporary Assistance to Needy Families Block Grant, the agency has removed the maximum limit allowed for a dependent care deduction. Although policy was changed removing the cap on the dependent care deduction effective March 1998, the agency failed to revise §1149. Additionally, the agency has removed the dependent care deduction for those recipients who received FITAP in October 1988 or August

1992 based on application of the deduction and when such recipients would be disadvantaged by loss of the deduction.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 11. Application, Eligibility, and Furnishing Assistance

Subchapter C. Need and Amount of Assistance

§1149. Earned Income Deductions

A.1. - 2. ...

3. Dependent Care. Recipients may be entitled to a deduction for dependent care for an incapacitated adult, or for a child age 13 or older who is not physically or mentally incapacitated or under court supervision.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:460.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), amended LR 10:1030 (December 1984), amended by the Department of Social Services, Office of Eligibility Determinations, LR 15:629 (August 1989), amended by the Department of Social Services, Office of Family Support, LR 18:869 (August 1992), LR 23:1707 (December 1997), LR 25:710 (April 1999).

Madlyn B. Bagneris
Secretary

9904#048

RULE

**Department of Social Services
Office of Family Support**

Food Stamp Program—Alien Eligibility
(LAC 67:III.1928, 1931-1933, 1994)

The Department of Social Services, Office of Family Support, has amended LAC 67:III.Chapter 19 pertaining to the Food Stamp Program.

Since 1996 several public laws revising the *United States Code* have prompted the agency to promulgate and amend rules with regard to the food stamp eligibility of non-citizens. Program review of the Notice of Intent and Declaration of Emergency concerning §1994 (*Louisiana Register*, October 1998) revealed that previous revisions had failed to include the basic regulations regarding qualified aliens. Further review noted that although Subchapter D was originally reserved for this subject area, the agency had failed to utilize it. Because Subchapter K contained reference to aliens, the first revision pursuant to welfare reform was an amendment to it.

Therefore, the agency now proposes to promulgate these regulations under Subchapter D. A change is also necessary to expand the section numbers available under Subchapter D. To accomplish this current §1931 entitled Verification of Eligibility has been renumbered as §1928 with no change to its content.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter B. Application Processing

§1928. Verification of Eligibility

A. The Office of Family Support shall require verification of residency requirements, the identity of the person making application and continuing shelter charges.

B. The Office of Family Support may, with prior Food and Nutrition Service approval, require additional verification of other eligibility factors as indicated by quality control reviews, audits, or other special reviews.

C. The agency will require verification of necessary information within 10 days. Failure to provide such verification may result in rejection of the application unless the household has requested additional time in which to obtain the verification or assistance in obtaining the verification. If the case is closed due to failure to submit required verification and the verification is subsequently provided within the initial 30-day period, the application will be reactivated retroactively to the date of application. If the verification is provided in the second 30-day period, the application will be reactivated and benefits will be prorated from the date the missing verification is provided.

AUTHORITY NOTE: Promulgated in accordance with F.R. 46:3194 et seq., 7 CFR 273.2, 7 CFR 273.3.c.(1)(ii).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:710 (April 1999).

Subchapter D. Citizenship and Alien Status

§1931. Qualified Aliens

A. In addition to U.S. citizens, the following qualified aliens are eligible for benefits:

1. an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act;
2. an alien who is granted asylum under Section 208 of such Act;
3. a refugee who is admitted to the United States under Section 207 of such Act;
4. an alien who is paroled into the United States under Section 212(d)(5) of such Act for a period of at least one year;
5. an alien whose deportation is withheld under §243(h) of such Act (as in effect immediately before the effective date of §307 of Division C of Public Law 104-208) or §241.b.3 of such Act (as amended by Section 305(a) of Division C of Public Law 104-208);
6. an alien who is granted conditional entry pursuant to §203(a)(7) of such Act as in effect prior to April 1, 1980; or
7. an alien who is a *Cuban* or *Haitian* entrant, as defined in §501.e of the Refugee Education Assistance Act of 1980;
8. an alien who has been battered or subjected to extreme cruelty in the United States by a spouse or parent, or by a member of the spouse's or parent's family residing in the same household as the alien if the spouse or parent consented to, or acquiesced in, such battery or cruelty. The individual who has been battered or subjected to extreme cruelty must no longer reside in the same household with the individual who committed the battery or cruelty. The agency must also

determine that a substantial connection exists between such battery or cruelty and the need for the benefits to be provided. The alien must have been approved or have a petition pending which contains evidence sufficient to establish:

- a. the status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of §204(a)(1)(A) of the Immigration and Nationality Act (INA); or
- b. the classification pursuant to clause (ii) or (iii) of Section 204(a)(1)(B) of the INA; or
- c. the suspension of deportation and adjustment of status pursuant to §244(a)(3) of the INA; or
- d. the status as a spouse or child of a United States citizen pursuant to clause (i) of §204(a)(1)(A) of the INA, or classification pursuant to clause (i) of Section 204(a)(1)(B) of the INA;

9. an alien child or the alien parent of a battered alien as described in §1931.A.8.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208, P.L. 105-33 and P.L. 105-185.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 7:265 (May 1981), amended by the Department of Social Services, Office of Family Support, LR 22:286 (April 1996), LR 25:710 (April 1999).

§1932. Time Limitations for Certain Aliens

A. The following qualified aliens are eligible for benefits for a period not to exceed seven years after they obtain designated alien status:

1. refugees admitted under §207 of the Immigration and Nationality Act (INA);
2. asylees admitted under §208 of the INA; and
3. an alien whose deportation is withheld under §243(h) of such ACT (as in effect immediately before effective date of §307 of division C of P.L. 104-208) or §241(b)(3) of such Act (as amended by Section 305(a) of division C of P.L. 104-208);
4. *Cuban* and *Haitian* entrants as defined in §501(e) of the Refugee Education Assistance Act of 1980;
5. *Amerasian* immigrants admitted pursuant to §584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988 as contained in §101(e) of P.L. 100-202 and amended by the 9th proviso under migration and refugee assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, P.L. 100-461, as amended.

B. The following qualified aliens are eligible for an unlimited period of time:

1. veterans who have met the minimum active duty service requirements of Section 5303 A(d) of Title 38, *United States Code*, who were honorably discharged for reasons other than alienage and their spouses or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, *United States Code*, and unmarried dependent children;

2. active duty personnel (other than active duty for training) and their spouses, or unremarried surviving spouses, if the marriage fulfills the requirements of Section 1304 of Title 38, *United States Code*, and unmarried dependent children;

3. aliens who have worked 40 qualifying quarters of coverage under Title II of the Social Security Act or can be credited with such qualifying quarters;

4. individuals who were lawfully residing in the United States on August 22, 1996 and are receiving benefits or assistance for blindness or disability as defined in §3(r) of the Food Stamp Act of 1997.

5. individuals who were lawfully residing in the United States on August 22, 1996 and were 65 years of age or older;

6. individuals who were lawfully residing in the United States on August 22, 1996 and are under 18 years of age.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 105-33 and P.L. 105-185.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999).

§1933. Non-Qualified Aliens

A. The following aliens may be eligible for an indefinite period of time even though they are not qualified aliens.

1. Individuals who are lawfully residing in the United States and were members of a Hmong or Highland Laotians tribe at the time the tribe rendered assistance to the United States personnel by taking part in a military rescue operation during the Vietnam era beginning August 5, 1964 and ending May 7, 1975, as defined in §101 of Title 38, *United States Code*; the spouse or an unmarried, dependent child of such an individual; or the unremarried surviving spouse of such an individual who is deceased.

2. Individuals who are American Indian born in Canada to whom the provisions of §289 of the Immigration and Nationality Act apply or who is a member of an Indian tribe as defined in §4(e) of the Indian Self-Determination and Education Assistance Act.

AUTHORITY NOTE: Promulgated in accordance with P.L. 105-185.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999).

Subchapter K. Action on Households with Special Circumstances

§1994. Alien Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, P.L. 104-208 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), LR 24:354 (February 1998), repealed LR 25:711 (April 1999).

Madlyn B. Bagneris
Secretary

9904#039

Notices of Intent

NOTICE OF INTENT

Department of Economic Development Board of Examiners of Certified Shorthand Reporters

Guidelines for Professional Practice (LAC 46:XXI.1301)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq. notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters, proposes to adopt the Professional Code of Ethics Rule.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 13. Code of Ethics

§1301. Guidelines for Professional Practice

A. The mandatory Code of Ethics defines the ethical relationship the public, the bench, and the bar have a right to expect from a Certificate Holder. It sets out the required conduct of the Louisiana Certified Court Reporter when dealing with the user of reporting services, and acquaints the user, as well as the Certificate Holder, with guidelines established for professional behavior. The Guidelines for Professional Practice are goals for which every Certificate Holder should strive. Certificate Holders are urged to comply with the Guidelines, which do not exhaust the moral and ethical considerations with which the Certificate Holder should conform, but provide the framework for the practice of reporting. Not every situation a Certificate Holder may encounter can be foreseen, but fundamental ethical principles are always present. By complying with the Code of Ethics and Guidelines for Professional Practice, Certificate Holders maintain their profession at the highest level.

B. A current certificate holder shall:

1. be fair and impartial toward each participant in all aspects of reported proceedings, treat all parties equally, and always offer comparable services and prices to all parties in a proceeding;
2. be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the Certificate Holder shall timely disclose said conflict or potential conflict to all parties in the proceeding or take the action(s) necessary for extraction from said conflict or potential conflict;
3. guard against not only the fact but the appearance of impropriety;
4. preserve the confidentiality and ensure the security of information, written, entrusted to the Certificate Holder by any of the parties in a proceeding;
5. be truthful and accurate when making public statements or when advertising the Certificate Holder's qualifications or the services provided;

6. refrain, as an official reporter, from freelance reporting activities that interfere with official duties and obligations;

7. determine fees independently, except when established by statute or court order, entering into no unlawful agreements with others, whether for services or charges;

8. deliver requested transcripts of testimony timely to all parties on the same day. Delivery shall be by hand, if reasonable, or by proper posting if hand delivery is not reasonable;

9. refrain from giving, directly or indirectly, any gift, incentive, reward, or anything of value to attorneys, clients, witnesses, insurance company personnel or any other persons or entities associated with (the) litigation, or to the representatives or agents of any of the foregoing, except for:

a. items that do not exceed \$100.00 in the aggregate per recipient each year; or

b. pro bono services as defined by the National Court Reporters Association Guidelines for Professional Practice or by applicable state and/or local laws, rule, and regulations;

10. abide by the applicable nation/state/local laws and court rules and the rules promulgated by the Louisiana Board of Examiners of Certified Shorthand Reporters.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 25:

Interested persons may submit written comments to Tonya Romaine, Louisiana Board of Examiners of Certified Shorthand Reporters, P. O. Box 3257, Baton Rouge, LA 70821.

Milton Donegan, Jr.

Chairman

Office Administration Committee

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Guidelines for Professional Practice

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this rule will not involve any cost to any State or Governmental Units.
- 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 Government.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no significant direct estimated costs or economic benefits to directly affected persons or non-governmental groups. The Rules will require the Court Reporters to be fair

and impartial toward each participant in all aspects of reported proceedings, treating all parties equally, and always offering comparable services and prices to all parties in a proceeding.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no direct significant effect on competition and employment. All Court Reporters will be subject to the proposed code of ethics.

Milton Donegan, Jr.
Chairman
Office Administration Committee
9904#064

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Economic Development Award Program
(LAC 13:I.6017)**

In accordance with R.S. 51:2341, notice is hereby given that the Department of Economic Development, Office of the Secretary, proposes to amend rules and regulations in LAC 13:I.Chapter 60 for the Economic Development Award Program by adding §6017.

**Title 13
ECONOMIC DEVELOPMENT
Part I. Commerce and Industry
Subpart 3. Financial Incentives**

**Chapter 60. Economic Development Award Program
§6017. Public Safety Provision**

The Secretary may approve a request for funding for less than \$25,000 if the request involves the protection and enhancement of the safety of the public.

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

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 25:

Interested persons may comment on the proposed rules in writing until June 18, 1999 to Randy Rogers, National Marketing Director, Department of Economic Development, Post Office Box 94185, Baton Rouge, LA 70804-9185 or 101 France Street, Suite 202, Baton Rouge, LA 70802.

Kevin P. Reilly, Sr.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Economic Development Award Program**

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

Pursuant to Louisiana R.S. 51:2341, et seq., this program is administered by the Department of Economic Development (DED), Office of the Secretary. No changes in cost are anticipated. Existing Staff within the National Marketing

Division will be used to administer the program and to provide the economic impact analysis.

The Department of Economic Development has adopted a rule which allows for funding of infrastructure projects below \$25,000.00 when the protection and enhancement of the safety of the public is involved.

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

No effect on revenue collection is anticipated.

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

This change in the program rules is expected to allow funding for infrastructure projects which protects and enhances public safety for approximately three to six (3 - 6) local entities in its first year of funding. The number to be served in future years is anticipated to slowly increase depending on the number of applicants and an increase in funding.

LAC 13:I, Chapter 60, Section 6017 allows for funding of infrastructure projects below \$25,000.00 when the protection and enhancement of the safety of the public is involved.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This program's goal is to reduce unemployment and the risk of future unemployment by assisting businesses through incentives. This change in the Rules was made in an attempt to provide for funding below \$25,000.00 for projects that protect and enhance public safety.

Kevin P. Reilly, Sr.
Secretary
9904#056

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

**Bulletin 741—Louisiana Handbook for School
Administrators/Adult Education Program
(LAC 28:I.901)**

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, an amendment to Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed amendment revises all policies related to the high school equivalency diploma being issued by the State Department of Education rather than a local high school. The amendment revises the wording to provide adult education as stipulated in the Workforce Investment Act of 1998.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§901. School Approval Standards and Regulations**

A. Bulletin 741

* * *

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 24:1085 (June 1998), LR 25:

**Bulletin 741—Louisiana Handbook
for School Administrators**

1.124.00 The Adult Education program shall be administered by the State Department of Education (SDE) and operated by eligible entities as stipulated in Title II of the Workforce Investment Act. The State Department of Education shall certify adult education sites of instruction using procedures as approved by the Board of Elementary and Secondary Education.

1.124.01 State or federally funded entities operating an adult education program or activity shall not exclude exceptional persons.

Requirements for Taking the General Educational Development (GED) Test

1.124.03A Any State-approved adult education site of instruction may recommend an individual to take the General Educational Development (GED) Test.

Issuance of Equivalency Diplomas

1.124.11 A high school equivalency diploma will be issued from the Louisiana State Department of Education after the student has successfully completed the test of General Educational Development (GED).

1.124.12 Repealed.

1.124.13 Repealed.

1.124.14 A Louisiana resident who successfully completes the General Educational Development (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 Adult Education and Training in the Louisiana Department of Education, and provided the student meets all other qualifications to receive an equivalency diploma. Veterans do not need to submit qualifying scores.

1.124.18 Public high school equivalency diplomas shall be signed by the State Superintendent of Education and the President of the State Board of Elementary and Secondary Education.

Interested persons may submit written comments until 4:30 p.m., June 8, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 741—Louisiana Handbook for
School Administrators/Adult Education Program**

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

The estimated implementation costs will be:

1. Advertising and disseminating changes to Bulletin 741 \$300

2. Design cost for new GED Diploma to be paid by state office \$300

Total Cost = \$600

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 and/or economic benefits that will directly affect persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9904#058

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—Test Security Policy/Erasure
Analysis Procedures (LAC 28:I.901)

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, an amendment to the Addendum in Bulletin 741, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975). The revised Test Security Policy provides school districts with acceptable practices for administering and using state tests. The Erasure Analysis Policy outlines the procedures for conducting erasure analysis, and will be placed in the Addendum immediately following the Test Security Policy.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§901. School Approval Standards and Regulations**

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, II; R.S. 17:22 (2).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November, 1975), amended LR 23:560 (May 1997), LR 23:709 (June 1997), LR 23:1644 (December 1997), LR 24:1495 (June 1998), LR 24:1085 (August 1998), LR 24:1896 (October 1998), LR 25:

Test Security Policy

The Board of Elementary and Secondary Education holds the test security policy to be of utmost importance and deems any violation of test security to be serious.

Test Security

1. Tests administered by or through the State Board of Elementary and Secondary Education shall include, but not be limited to:

- a. Graduation Exit Examination (GEE);
- b. all criterion-referenced tests (CRTs) and norm-referenced tests (NRTs).

2. For purposes of this policy, school districts shall include local education agencies; Special School District Number 1 schools; approved special schools such as the Louisiana School for the Visually Impaired and Louisiana School for the Deaf; laboratory schools, charter schools, Louisiana School for Math, Science and the Arts, and participating nonpublic/other schools which utilize tests administered through the State Board of Elementary and Secondary Education or the Louisiana Department of Education.

It shall be a violation of test security for any person to do any of the following:

- a. administer tests in a manner that is inconsistent with the administrative instructions provided by the Louisiana Department of Education (LDE) which would give examinees an unfair advantage or disadvantage;
- b. give examinees access to test questions prior to testing; NO ONE IS TO HAVE THE OPPORTUNITY TO EXAMINE ANY TEST ITEM AT ANY TIME EXCEPT THE STUDENT DURING THE TEST;
- c. copy, reproduce, or use in any manner inconsistent with test regulations all or part of any secure test booklet or answer document;
- d. coach examinees in any manner during testing or alter or interfere with examinees' responses in any manner;
- e. provide answers to students in any manner during the test, including provision of cues, clues, hints, and/or actual answers in any form—written, printed, verbal or nonverbal;
- f. administer published parallel or current forms of a test (e.g., Forms K, L, and M of The Iowa Tests) as a practice test; such parallel forms of a test must be kept in a predetermined, locked, secure area at the district office;
- g. fail to follow security regulations for distribution and return of secure test booklets and answer documents as well as overages as directed; or fail to account for and secure test materials before, during, or after testing; all secure materials must be kept in locked storage at both the district and school levels; secure materials MUST NEVER be left in open areas or unattended;
- h. conduct testing in environments that differ from the usual classroom environment without prior written permission from the Louisiana Department of Education, Division of Student Standards and Assessments;
- i. fail to report any testing irregularities to the District Test Coordinator (a "testing irregularity" is any incident in test handling or administration that leads to a question regarding the security of the test or the accuracy of the test data);
- j. participate in, direct, aid, counsel, assist in, encourage, or fail to report any of the acts prohibited in this section.

3. Each school district as described in this policy shall develop and adopt a district test security policy that is in compliance with the state test security policy. A "Statement of Assurance" regarding the LEA test security policy must be submitted annually to the Louisiana Department of Education, Division of Student Standards and Assessments. This statement must include the name of the individual designated by the district superintendent or institution to procure test materials. The policy shall provide:

- a. for the security of the test materials during testing, including test booklets, answer documents, test administrators' manuals, observational answers, video tapes, and completed observation sheets;
- b. for the storage of all test materials except test administrators' manuals in a predetermined, secure, locked area before, during, and after testing;
- c. a description and record of professional development on test security and test administration provided for all individuals with access to test materials (access to test materials by school personnel means *handling* the materials but does not include reviewing tests or analyzing test items, which are prohibited);
- d. a list of personnel authorized to have access to the locked, secure storage area;
- e. a procedure for investigating any testing irregularities, especially erasure analysis.

4. Test materials, including all test booklets and answer documents containing secure test questions, shall be kept secure and accounted for in accordance with the procedure specified in the examination program administration manuals and other communications provided by the Louisiana Department of Education. Secure test materials include test administrators' manuals, test booklets, and answer documents.

The manual procedures shall include, but are not limited to, the following.

- a. All test booklets and answer documents shall be kept in a predetermined, secure, locked storage area prior to and after administration of any test; test administrators are to be given access to the tests only on the day the test is to be administered, and the tests are to be retrieved immediately after testing is completed for the day and stored in a locked, secure location each day of testing.
- b. All test booklets and answer documents shall be accounted for and written documentation kept by test administrators and proctors for each point at which test materials are distributed and returned.
- c. Any discrepancies noted in the number of serial numbers of test booklets and answer documents received from contractors shall be reported to the Director, Division of Student Standards and Assessments (LDE) by the designated institutional or school district personnel prior to the administration of the test.
- d. In the event the test booklets or answer documents are determined to be missing while in the possession of the institution or school district, the designated institutional or school district personnel shall immediately notify by telephone the Director, Division of Student Standards and Assessments (LDE). The designated institutional or school

district personnel shall investigate the cause of the discrepancy and provide the Louisiana Department of Education with a report of the investigation within thirty (30) calendar days of the initiation of the investigation. At a minimum, the report shall include the nature of the situation, the time and place of occurrence, and the names of the persons involved in or witnesses to the occurrence. Officials from the Louisiana Department of Education are authorized to conduct additional investigations.

5. Only trained personnel shall be allowed to have access to or administer any standardized tests.

6. Each district superintendent or institution shall annually designate one individual in the district or institution who is authorized to procure test materials that are utilized in testing programs administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education. The name of the individual designated shall be provided, in writing, to the Director, Division of Student Standards and Assessments (LDE), and included on the "Statement of Assurance."

7. Testing shall be conducted in class-sized groups. Bulletin 741 (2.038.01-02) states that K-3 classroom enrollment should be no more than 26 students, and in grades 4-12, no more than 33, "except in certain activity types of classes in which the teaching approach and the materials and equipment are appropriate for large groups." For grades K-8, the maximum class size for Health and Physical Education classes may be no more than 40. Class size for exceptional students is generally smaller (Bulletin 741, 2.038.05). Permission for testing in environments that differ from the usual classroom environment must be obtained in writing from the Louisiana Department of Education, Division of Student Standards and Assessments at least thirty (30) days prior to testing. If testing outside the usual classroom environment is approved by the Division of Student Standards and Assessments, the LEA must provide at least one proctor for every 30 students.

8. The State Superintendent of Education may disallow test results which may have been achieved in a manner which is violative of test security.

9. The Louisiana Department of Education shall establish procedures to identify:

- a. improbable achievement of test score gains in consecutive years;
- b. situations in which collaboration between or among individuals may occur during the testing process;
- c. a verification of the number of all tests distributed and the number of tests returned;
- d. excessive erasures for multiple-choice tests;
- e. any violation to written composition or open-ended responses that involves plagiarism;
- f. any other situation which may result in invalidation of test results.

10. In cases where test results are not accepted because of breach of test security or action by the Louisiana Department of Education, any programmatic, evaluative, or graduation criteria dependent upon the data shall be deemed not to have been met.

11. Individuals shall adhere to all procedures specified in all operational manuals that govern mandated testing programs.

12. Any individual(s) who knowingly engages in any activity during testing which results in invalidation of scores derived from the Graduation Exit Examination shall forfeit the test results and will be allowed to retake the test at the next test administration; beginning in 2000, any individual(s) who knowingly engages in any activity during testing which results in invalidation of scores derived from LEAP for the 21st Century shall forfeit the test results and will be allowed to retake the test at the next test administration;

13. Anyone known to be involved in the presentation of forged, counterfeit, or altered identification for the purposes of obtaining admission to a test administration site for any test administered by or through the State Board of Elementary and Secondary Education or the Louisiana Department of Education shall have breached test security. Any individual(s) who knowingly causes or allows the presentation of forged, counterfeit, or altered identification for the purpose of obtaining admission to any test administration site shall forfeit all test scores and will be allowed to retake the test at the next test administration.

14. Any teachers or other school personnel who breach test security or allow breaches in test security shall be disciplined in accordance with the provisions of R.S. 17:416 et seq., R.S. 17:441 et seq., policy and regulations adopted by the Board of Elementary and Secondary Education, and any and all laws that may be enacted by the Louisiana Legislature.

Louisiana Educational Assessment Program Erasure Analysis Procedures

In order to investigate erasures to student answer documents for the multiple-choice portions of the state criterion-referenced and norm-referenced testing programs, the following procedures have been developed.

1. The scoring contractor will scan every answer document for wrong-to-right erasures, and the state average and standard deviation will be computed for each subject at each grade level.

2. Classrooms of six or more students that exceed the state average by more than four standard deviations will be identified for further investigation.

3. The scoring contractor will produce *School/Class Erasure Analysis Reports* for those districts that have classrooms exceeding the four standard deviation criterion. This is a classroom-level report, aggregated to the district level.

4. For each classroom identified using the four standard deviation criterion, the LDE will receive from the scoring contractor:

School/Class Erasure Analysis Report (three copies, sorted by district) for districts having classrooms that exceed the four standard deviation criterion.

Student Erasure Analysis Report for students in the identified classrooms that exceed the four standard deviation criterion. This report contains student demographic information, an item-by-item analysis of wrong-to-right erasures, and a statement showing that the student exceeded

the four standard deviation criterion. The scoring contractor will maintain answer documents for the students exceeding the four standard deviation criterion (who are in classrooms that exceed the four standard deviation criterion), sorted by district/school/class. The answer documents will be available for review upon request.

5. Upon receipt of the *School/Class Erasure Analysis Reports*, LDE staff will notify the State Superintendent of Education regarding which schools have been identified.

6. The correspondence from the State Superintendent of Education to the local superintendent will state that a classroom (or classrooms) has been identified as having excessive erasures. Based on the number of erasures found, scores for students exceeding the four standard deviation criterion (who are in classrooms that exceed the four standard deviation criterion) will be voided. The individual student reports from the testing program will reflect the voided scores. In the aggregation of scores at the school, district, and state levels, the voided scores will have the effect of a "zero" score. Included with the correspondence will be the following documentation:

School/Class Erasure Analysis Report Student Erasure Analysis Reports

Copies of this correspondence will be provided to the Deputy Superintendent of Education, the Assistant Superintendent of the Office of Student and School Performance, the Director of the Division of Student Standards and Assessments, and the local District Test Coordinator.

7. When the correspondence is mailed (certified), the local superintendent will be advised to investigate the case of the irregularity and provide a written plan of action to the State Superintendent of Education within twenty working days.

8. A roster of classrooms will be generated where each identified classroom has an average of wrong-to-right erasures greater than three standard deviations above the state average, but less than or equal to four standard deviations above the state average of wrong-to-right erasures. These student scores will not be voided; however, local districts are expected to closely monitor security procedures at those schools.

9. A summary report of erasure analysis irregularities will be presented to the Louisiana Educational Assessment Testing Commission and the Board of Elementary and Secondary Education after each LEAP test administration.

Interested persons may submit written comments until 4:30 p.m., June 10, 1999, to Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Bulletin 741—Test Security Policy/ Erasure Analysis Procedures**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated costs to the state or local government units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections at the state or local level.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There should be no effect on costs or benefits to directly affected persons in nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should be no impact on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9904#053

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1794—State Textbook Adoption Policy and
Procedure Manual
(LAC 28:XXXIII.101-2133)

Editor's Note:

Bulletin 1794 was promulgated as a rule in LR 2:110 (April 1976), and LR 13:496 (September 1987), amended LR 14:227 (April 1988), LR 16:956 (November 1990), LR 16:957 (November 1990), LR 18:255 (March 1992), LR 18:955 (September 1992), LR 21:201 (February 1995), LR 21:551 (June 1995), LR 21:1329 (December 1995), and LR 24:434 (March 1998) in uncodified format. When this bulletin becomes a rule as a codified document, historical notes will reflect activity from that time forward.

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the State Board of Elementary and Secondary Education approved for advertisement revised Bulletin 1794, promulgated in LR 2:110 (April 1976), referenced in LAC 28:I.919.A. Bulletin 1794 contains procedures and guidelines for the adoption of state approved textbooks and reference materials.

Title 28 EDUCATION

Part XXXIII. Bulletin 1794—State Textbook Adoption Policy and Procedure Manual

Chapter 1. Purpose

§101. Introduction

A. The State Board of Elementary and Secondary Education (SBESE), in accordance with Chapter 1 of Title 17

of the Louisiana Revised Statutes of 1950, Part I, Sections 7 (4), 8(A)(1)(a) and Part IV, Section 351(A)(1), has responsibility to prescribe, adopt, control and supervise the distribution and use of free school books and other materials of instruction in elementary, secondary, special, post secondary and vocational-technical schools across the state of Louisiana. Funds are appropriated by the Louisiana Legislature in accordance with Article VIII, Section 13(A) of the Constitution for the purpose of providing school books and other materials of instruction free of charge to the children of this state at the elementary and secondary levels.

B. It is hoped that the policies and procedures contained in this bulletin will help local school districts to provide textbooks that will have a significant, positive impact on student achievement, student attitudes and behaviors, and on the interactions in the learning environment for students of all ages, abilities, backgrounds and areas of interest. Any interested citizen may request their name be placed on the mailing list for textbook adoption information (R.S. 17:415.1A) by writing to:

State Department of Education
Division of School Standards,
Accountability and Assistance
7th Floor, Room 740
Baton Rouge, Louisiana 70802

Attn: State Textbook Administrator

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 3. General Provisions

§301. Definitions

Ancillary—materials shall be defined as materials that are intended and designed to be used with a comprehensive basal program submitted by the same publisher, and may include materials such as workbooks, puzzles, assessment materials, black line masters, transparencies, etc. *Ancillary materials will be added to the publishers' contract after BESE approval of the basal textbook and teacher's edition.*

Basal—shall be defined as student-based curricular materials (print or non-print) which encompass the BESE-approved Louisiana Content Standards for specified subject areas. These curricular materials are considered a major teacher and student resource for attainment of the state standards and benchmarks and for the locally designed and aligned curriculum and course.

Core Subject Cycle—refers to the adoption period for English/Language Arts, Science, Social Studies, and Mathematics.

Teacher's Edition—shall be defined as materials used for informing teachers' instruction that are not designed or intended to be used by students. Teacher's editions may include teacher guides or instructor's manuals.

Textbook—shall be defined as any medium or material (print or non-print), book, or electronic medium that constitutes the *principal source for teaching and learning* in a specified subject area. A textbook shall be a systematically organized core of *stand alone* instructional materials (which may be hardbound, softbound, electronic or other media) designed to

support the teaching and learning of a curriculum based on the state-approved content or state curriculum guides [e.g., home economics, foreign language, health, business education], as approved by BESE.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§303. Textbook Approval

A. "The state shall prescribe and adopt free school books and other materials of instruction for use in elementary and secondary schools."

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:8(A)(B); R.S. 17: 351(A)(B).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§305. Textbooks and Materials of Instruction

A. State Screening of Textbooks and Materials of Instruction

1. "The state shall assure that all school books, films, related booklets, audio-visual devices, and any other similar materials of instruction are thoroughly screened, reviewed and approved as to their content by BESE and the local parish or city school board." Textbooks and teaching materials shall be available for public inspection at the Department's book depository and public libraries during regular office hours.

B. Adequate and Appropriate Instructional Materials

1. Instruction [at the local level] shall be supported with adequate and appropriate instructional materials, equipment, and available community resources that support the stated philosophy and purposes of the school system and state adopted content standards.

C. Formal Adoption and Implementation of Textbooks

1. Each school district shall make a formal adoption of textbooks within *3 months* from the date of state-level approval by the State Board of Elementary and Secondary Education (BESE). (Refer to Section II, LEA Responsibilities.)

2. School systems shall implement the latest textbook adoption for core subject areas of English/Language Arts, Science, Social Studies, and Mathematics within a three year period, in accordance with locally determined levels of access to be provided to students (i.e. classroom sets, personal copy). (Refer to Section II, LEA Responsibilities.)

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4);8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§307. Louisiana State Adoption Cycle and Time Lines

A. Texts for specific subject areas shall be adopted every seven years. See appendix for adoption cycles.

B. Broad time lines governing the adoption process are listed on the following page. The Department of Education shall annually specify dates to be followed in each adoption year, per the Invitation Circular Letter to Submit Textbooks and Materials of Instruction for State Adoption which is issued annually to publishers.

C. Time Lines

Invitation to Submit Textbooks and Materials of Instruction Issued by SDE	Early March
Notice of Publishers' Intent to Participate Due to SDE	End March
SDE Supplies Submission Packet and Forms to Requesting Publishers	End March
State Committee Appointed (confidential letter)	April
SDE Informs Participating Publishers of State Committee Names/Publicly Names State Adoption Committee	April
Publishers' Mandatory Orientation	April
Submission Forms Due from Publishers to SDE; Manufacturing Standards on each Book Due to SDE	May
Detailed Specifications Filed by Publishers with SDE Regarding Hardware, Software, Special Equipment needed to review any item included in bid	May
Detailed Correlations to State Content Standards/Curriculum Guides Due to SDE from Publishers	May
State Committee Orientation	June/July
State Committee Files List with SDE of Equipment Needed to Review Textbooks	June/July
Publishers Supply Textbooks for Review to Designated Locations	June/July
State Committee Review of Textbooks	June/July-Mid-September
Public Review of Textbooks	June/July-Mid-September
Final Date for State Committee Members to Submit Written Questions for Publishers on Books Under Consideration	Mid-September
Final Date for Publishers to Submit copies to SDE of Answers to Written Questions from State Committee	October 1
SDE to Forward to State Committee Publishers' Written Answers	First Week October
SDE to Forward to State Committee All Written Public Comments	First Week October
State Committee Makes Final Recommendations for Adoption; State Committee files Affidavit Regarding Contact with or by Publishers	Mid-October
Publishers File Affidavit Regarding Contacts with State Board of Elementary and Secondary Education Members, Textbook and Media Advisory Council and Members of the Statewide Adoption Committee.	End October
Receive the Report on public comments by Textbook and Media Advisory Council	End October
Publishers Submit Final Versions of Texts to Replace Initial Galley Proofs	End October
BESE Approval of Textbooks Recommended for Current Adoption & Contact Affidvts.	End October

Publishers/Contracts Approved by BESE	November/December
Final Date for Publishers of Adopted Textbooks to Comply with SDE Directives on Production of Braille Materials	End March
Textbook Caravan	November-January
Local Adoption	November- End March
Initial Local Ordering	March-Mid-May

NOTE: Specific dates and timelines to be specified by SDE each year with Invitation Circular Letter.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4);8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§309. Funding for Textbooks

A. The Constitution provides that the Legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education (SBESE) to the children of this state at the elementary and secondary levels. The SBESE annually develops and adopts a formula to determine the cost of a minimum foundation program of education. Additional funds for textbooks may be awarded through state grants (e.g., 8g Quality Educators and K-3 Reading) and through federal grants.

B. State funds shall be used for the purchase of textbooks on the SBESE-adopted textbook list and academically related ancillary materials according to state guidelines (Bulletin 741, 3.026.13). Funds may also be used to purchase instructional materials for grades Kindergarten - Three and appropriate special education classes that are manipulative and concrete in nature in order to support the instructional program at these grade levels. Waivers for purchase of non-adopted textbooks/materials which exceed 10 percent of the state allocations may be granted to local school systems in special circumstances.

C. The State Board of Elementary and Secondary Education, at its meeting of June 22, 1989, exercised those powers conferred by the emergency provision of the Administrative Procedure Act, R.S. 49:953 B, and adopted the following guidelines to allow state textbook funds to be used to purchase instructional materials for Grade K-3 as recommended by the Department of Education.

1. For classes K-3, the school superintendents are authorized to use textbook funds to purchase textbooks and other materials that can be used to support the instruction in these four elementary grades (K-3).

2. The major emphasis in selecting instructional materials for K-3 should be on manipulative and concrete materials such as blocks, dramatic/housekeeping toys, manipulative (puzzles, legos, etc.), gross motor materials (jump ropes, balls, etc.) and other manipulative materials.

3. The characteristics and needs of the child in grades K-3 should be considered when selecting appropriate materials.

D. The State Board of Elementary and Secondary Education may authorize the Louisiana School of Math, Science and the Arts and other parish or city school boards with programs for gifted students to select and purchase textbooks not included on the lists adopted by the Board pursuant to the provisions of this Section, provided that such authorization shall be on an ad hoc basis and shall be subject to prior approval by the Board. Such purchases may be made using funds appropriated by the Legislature for the purchase of textbooks as provided for herein.

E. Public Schools

1. State and local funding for approved textbooks is generated through the Minimum Foundation Program (MFP) funding formula. The formula determines the minimum cost of total operational expenditures for each school system. Districts receive the state's share as part of a monthly allotment with provision for local flexibility that allows funds to be used as deemed appropriate by school systems. The amount of funding needed to supply an adequate number of new textbooks for any given adoption can be estimated using the following formula:

October 1 Student Membership (By Grade Level)	X	Textbook Unit Price (As adopted by LEA)	=	Estimated Textbook Costs (Costs Shared State and Locally)
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2. It is required that districts take no more than three years to purchase newly adopted textbooks for core curriculum areas at all grade levels. The following example provides a method of estimating minimum expenditures for any given adoption cycle.

E.G., Math Adoption Cycle:			
Step 1			
OCTOBER 1 MEMBERSHIP	UNIT PRICE	ESTIMATED COSTS	
1,000 (Grades K-6) X	\$30.00 =	\$30,000	Full Implementation
+1,000 (Grades 7-12) X	\$40.00 =	\$40,000	Full Implementation
2,000 (Total)		= \$70,000	Full Implementation
Or;			
Step 2	\$70,000 / 3 = \$23,333	Estimated Minimum First Year Math Implementation <u>for a school district with student population of 2,000</u>	

F. Nonpublic Schools

1. Each nonpublic school receives a textbook allocation based on the number of K-12 nonpublic students enrolled in BESE and Brumfield-Dodd approved nonpublic schools. Reimbursement will be made to local school districts for purchases of nonsectarian books for nonpublic school students at the rate of \$27.02 per student. All books (textbooks, library books, encyclopedias and encyclopedic references) that go through a state adoption process are considered appropriate and may be purchased for nonpublic school students. *Orders for textbooks and materials of instruction must be delivered during each fiscal year (i.e., July 1 to June 30) in order to be eligible for reimbursement.*

October 1 Student Enrollment X \$27.02 = State Nonpublic Textbook Allocation (Academically and Brumfield approved schools)
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2. If materials and supplies are included in purchase orders, it will be the responsibility of the local school district to conduct audits to ensure that the materials and supplies are used to provide students with nonsectarian instruction. Furthermore, all textbooks must be purchased and distributed through the local school district for each eligible nonpublic school in their area. It is requested that reimbursement requests be submitted in a timely manner. Payments will be made only from invoices. *In no event should these funds be distributed directly to nonpublic schools.*

3. Payments for textbooks and textbook administration will be made upon receipt of the completed Nonpublic School Textbook Invoice form provided through the Division of Educational Finance Services.

G. Special Funding For Textbooks

1. 8(g) Quality Education Support Fund

a. School districts and approved nonpublic schools may use 8(g) Quality Education Support Funds to supplement state MFP and local funding for textbooks and materials of instruction. The purpose of these funds is to ensure an adequate supply of superior textbooks, library books, and/or reference materials for these approved schools.

b. Effective with the 1996-97 granting cycle, Consent Judgement 90-880-A enjoins the State Board of Elementary and Secondary Education from making grant awards for library books and/or reference materials to non-public agencies that are determined to be pervasively sectarian entities.

c. Guidelines, issued each year by the State Board of Elementary and Secondary Education, should be consulted for specific requirements related to expenditures and for funding allocations.

H. Availability of Prestige License Plates and Applicable Revenues. R.S. 47:463.46, enacted during the 1997 Legislative Session, provides for a prestige license plate to provide special funding for the purchase of textbooks in approved elementary and secondary schools. The plate, bearing the words "Helping Schools," is available for purchase from the Department of Public Safety and Corrections at an annual fee of \$25.00, in addition to the regular fee. Revenues must be invested by the State Treasurer, on behalf of SBESE. Funds must be used solely for the purchase of textbooks.

I. Use of Federal Funds. School districts are encouraged to develop a consolidated plan, using all available funding streams, including federal funds, in order that adequate and appropriate textbooks and materials of instruction are available for students.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172:351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§311. Invitation Circular Letter

A. Specific dates are determined each year and are documented in the Invitation Circular notice issued to publishers.

B. The Invitation Circular Letter shall be sent to interested publishers from the Office of Student and School Performance (tentatively set for *March 1 of each year; refer to specific guidelines issued by the SDE each year*). The invitation will announce the subject and disciplines of materials being considered for adoption. Included in the invitation will be written guidelines and instructions covering the adoption process. The review of materials and adoption vote will be *limited to the student book (basal) and the teacher edition*. Publishers are also required to list on appropriate forms all ancillary and free materials which will accompany the basal texts. (Refer to §301 for definitions of textbooks, basal, teachers' edition, ancillary, and core subject cycle.)

C. The SDE shall provide specific forms to be used for textbook submissions. Publishers must list *each* book separately, along with copyright, price, printing edition, and grade/subject area to be considered for adoption, even if part of a series.

D. *No substitutions* shall be allowed to the list of textbooks once publishers submit the response to "Louisiana Textbook (LT)" forms. Publishers *WILL NOT* be allowed to discuss upcoming editions or pending revisions of texts *at any meetings* of the State Textbook Selection Committee.

E. *EACH* book must be evaluated on the basis of its current content. Final bound galley proofs may be submitted under certain circumstances, providing that the final hardbound copy is submitted, received and approved by the SDE prior to the final vote of the State Board of Elementary and Secondary Education. (Refer to specific timelines issued by the SDE for each adoption cycle.) Unbound manuscripts *will not* be accepted.

F. Publishers must guarantee that textbooks and materials of instruction which are submitted for consideration in the "LT Submission" form will be made available for duration of a seven-year contract period. *Do not submit materials that cannot be guaranteed for the duration of the contracted period*. No substitutions of texts or prices are allowed (unless the price is lowered, per Favored Nations clause) once the Submission Form is received by the SDE.

G. The Invitation Circular Letter shall also include an "*Intent to Participate*" form which shall be returned to the SDE by all publishers interested in responding to the Invitation.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§313. Establish State Textbook Adoption Committee

A. All textbook adoption committees appointed by the Superintendent of Education shall contain a membership of not less than one-third of which are teachers, not less than one-third of which are parents who are not public educators, and the remainder of which are other persons. For purposes of this section, the term *teacher* shall mean any person employed by a city or parish school board, who, as a condition of

employment, is required to hold a valid teaching certificate issued by the Department of Education (R.S. 17:415.1).

B. Nominations for membership may be made by the State Board of Elementary and Secondary Education, local school superintendents, and representatives of the BESE Nonpublic School Commission, as well as the State Superintendent of Education. The Committee shall contain a broad cross section in membership, to include parents, nonpublic educators, special educators, district-level curriculum supervisors, classroom teachers, and others who have interest and or knowledge of curriculum and subject matter under adoption.

C. Potential committee members shall be screened for potential conflict of interest with textbook publishers. Appointed members shall have no direct or indirect contact with publishers nor shall members have any business relationship, previous or planned, with any publisher. Committee members shall receive nothing of value from publishers or representatives in the state textbook adoption procedures, nor shall they accept any gratuity or offer of payment for services or attendance at publisher-sponsored functions. Potential members shall be asked to submit background information, including training and experience, willingness and availability to serve, and also an affidavit attesting that no conflict of interest with textbook publishers exists.

D. Committee members and publishers shall be informed in writing of appointment to the State Selection Committee by the State Superintendent according to the time line specified.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§315. Establish Criteria and Procedure for Evaluation and Selection of Textbooks and Materials of Instruction

A. The following SBESE-approved definition shall serve as a framework for the review of textbooks and materials of instruction which are offered for adoption.

1. A *State-Approved Textbook* is defined as a systematically organized core of instructional materials (which may be hardbound, softbound, electronic or other media) designed to support the teaching and learning of a curriculum based on the state-approved content standards *and state assessment* as approved by SBESE. This definition includes any medium or material (print or non-print), book, or electronic medium that constitutes the principal source of study for teaching in specified subject areas.

B. At a minimum, the following framework shall guide evaluation.

1. Textbooks and materials of instruction shall align with the standards and benchmarks of the State content standards, state-approved curriculum guides and state assessment program.

2. Textbooks and materials of instruction should promote an understanding of the history and values of the people of the United States and Louisiana, including the free enterprise system, private property, constitutional liberties, democratic values, and traditional standards of moral values. (R.S. 17:351).

3. Textbooks and materials of instruction should accurately reflect the contributions and achievements of people of differing races. (R.S. 17:351).

4. Other criteria as specified in the SDE-developed evaluation instrument (s).

Note: The SDE shall establish an appropriate evaluation instrument(s) which shall be used by State Textbook Adoption Committee members, and their local subcommittees, as tools for final decision making. In addition to the above frameworks, additional evaluation criteria shall focus on alignment of proposed textbooks and materials with the SBESE-approved state content standard/curriculum guides and assessment programs.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§317. Provide for a Publishers' Orientation

A. The SDE shall schedule an Orientation for all interested publishers. Publishers who are interested in submitting textbooks and materials of instruction for consideration are *required to have representation at the orientation or be eliminated.*

B. Publishers will receive information regarding expectations for content of state-adopted textbooks and materials of instruction. Procedures for submission, review and evaluation, and contracting will be discussed.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§319. Establish Procedures for Concerned Citizens' Involvement in the Review Process and a Procedure for Response by Textbook Publishers

A. A minimum of eight public sites shall be established for display and review of all basal textbooks presented for consideration. Sites shall include, at a minimum, New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lake Charles, Lafayette, and Houma.

B. The SDE shall establish, in accordance with R.S. 17:415.1, a procedure which allows interested persons who are legal residents of Louisiana to inspect and review the books offered for adoption at the public review sites. Said procedure shall allow for written comments by citizens and written responses by publishers, and if requested, oral presentations by citizens and publishers.

C. *Interested citizens* who choose to make oral objections before the *State Textbook Adoption Committee* shall be allotted a maximum of 10 minutes. Oral objections by citizens shall be limited to those objections which have been previously filed in writing with the Department of Education following review at the public display sites. Upon request, citizens may also request to state oral objections before the *Textbook, Media and Library Advisory Council* of SBESE who will report findings to the Student Standards and Assessment Committee of SBESE. Comments shall be limited to 10 minutes and include only those previously filed in writing with the Department of Education.

D. *Publishers* shall provide a written response and shall have an option (maximum of 10 minutes) to present a response

before the State Textbook Selection Committee and the Textbook, Media and Library Advisory Council of SBESE.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§321. Role and Responsibilities of the State Textbook Adoption Committee

A. Committee members shall receive nothing of value from potential bidders for state textbook adoption at any time during the adoption process, nor shall they accept any gratuity or offer of payment for services or attendance at publisher-sponsored functions. Potential members shall be asked to submit background information, including training and experience, willingness and availability to serve, and also an affidavit attesting that no conflict of interest with textbook publishers exists.

1. Members shall be informed in writing that they shall have *no contact with publishers* once formal appointment to the State Adoption Committee is received. Publishers shall not attempt to influence the deliberations or vote of a Committee member, either directly or through third parties. *Violations of this requirement may result in immediate disqualification of the publisher and committee member.*

2. State Committee members shall be provided orientation and training by the Department of Education on purposes of the adoption, criteria for evaluation, use of the evaluation instrument (s), and procedures to be followed if local subcommittees are used to assist in the review process. Staff members of the Department of Education shall serve as consultants on curricular content and adoption procedures during all meetings of the Committee.

3. Committee members are *required to be in attendance and participate in all scheduled* activities of the Committee. Members must be in attendance at all scheduled meetings of the Committee in order to cast a vote for textbooks under consideration. The committee chair shall verify the attendance of the members.

4. State Committee members shall evaluate all titles submitted for adoption using the state-approved evaluation instrument(s). One evaluation form shall be completed by each State Committee member on each title reviewed. Evaluation forms are designed to assist the State Committee member in formulating a final decision and vote. Forms shall in no way be considered as binding upon the final vote of the committee member. In accordance with public records law, evaluation forms used for decision making will be collected by the SDE.

a. Part of the evaluation allows each State Committee member to formulate and prioritize *relevant questions* to be addressed by publishers on each book. Said questions shall be forwarded to the SDE by each Committee member by a date to be specified by the SDE.

b. The Committee may elect to move titles of textbooks from one subject area to another if it is felt that the book was placed inappropriately in a subject area by the publisher.

B. Each State Committee member may select, with assistance of the local textbook supervisor, a local five-member subcommittee. The department encourages that local subcommittees be made up of a broad cross section in membership, and may include parents, nonpublic educators, special educators, district-level curriculum supervisors, classroom teachers, and others who have interest and or knowledge of curriculum and subject matter under adoption to assist in the evaluation process.

1. Each subcommittee should evaluate textbook materials using procedures and instruments that parallel those specified by the Department of Education for the State Committee. The evaluation instrument(s) include an area for written questions to be addressed by publishers on specific textbooks which may then be submitted to the State Committee member for consideration.

2. Evaluation forms completed by local subcommittees are to assist the State Committee member. Only those forms used by the State Committee member for decision making will be collected by the SDE.

C. *The final vote on each textbook under consideration shall be through a voice roll-call vote which shall be duly recorded by the SDE. The State Committee member shall have discretion and final authority in the vote on each textbook under consideration for adoption.*

1. Each book must receive a *favorable majority* (defined as one vote over half of appointed committee members in attendance) of votes of the State Textbook Selection Committee in order to be placed on the state adopted list.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§325. Adopting Authority

A. The State Board of Elementary and Secondary Education (SBESE) is the official adopting authority in the state of Louisiana. SBESE will receive the report from the Textbook, Media, and Library Advisory Council regarding public comments on textbooks proposed for adoption.

B. Oral objections shall be limited to those which have been previously filed in writing with the Department of Education following review at the public display sites. Persons choosing to make oral objections shall be allotted a maximum of 10 minutes to address the full Board.

C. Publishers shall be allowed to provide a written response and or allotted a maximum of 10 minutes to present relevant information before the full Board.

D. The Textbook, Media, and Library Advisory Council shall be composed of members appointed by the State Board of Elementary and Secondary Education. The Council's function is to review relevant legislation, proposed SBESE policy, hear public comments regarding textbooks and materials of instruction proposed for state adoption and report findings to the Student Standards and Assessment Committee.

E. The Student Standards and Assessment Committee is made up of members of the State Board of Elementary and Secondary Education. The Committee may hear public comments which have been scheduled as a result of written comments received during the public review period. The

Committee will in turn make recommendations to the full Board of Elementary and Secondary Education.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 5. Local School System Responsibilities

§501. Local Planning

A. Local school systems shall develop a plan for providing adequate and appropriate instructional materials for students. Such plans shall include formal adoptions and appropriate procedures, as well as plans for implementation of policies included in Section II, C. *Districts must submit plans to SDE by June 30 of each year.*

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§503. Formal Adoption (see also, Bulletin 741, 1.070.03)

A. School systems shall make a formal adoption of textbooks according to the state adoption cycle within 3 months from the date of formal approval by the State Board of Elementary and Secondary Education (BESE).

NOTE: Will require a change in Bulletin 741.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§505. Local Implementation

A. Adequate and Appropriate Instructional Materials

1. Textbooks and materials of instruction for all curriculum areas at the local level shall be supported with adequate and appropriate instructional materials, equipment, and available community resources that support the stated philosophy and purposes of the school system (see also, Bulletin 741, 1.070.00).

a. School systems shall make a formal adoption of textbooks within 3 months from the date of state-level approval by the State Board of Elementary and Secondary Education (BESE). Local school systems shall provide students with access to current textbooks that conform to minimum standards of quality.

2. Textbooks for Core Curriculum Areas

a. School systems shall implement the latest textbook adoption for *core subject areas* of English/Language Arts, Science, Social Studies, and Mathematics within a three-year period, in accordance with locally determined levels of access to be provided to students (i.e. classroom sets, personal copy, other specified arrangement).

b. Currency. A school system shall implement the latest textbook adoption for core subject areas within a three-year period. Waivers of this policy shall be approved by BESE only upon extenuating circumstances as documented in the local Plan of Implementation to be submitted by June 30 of each year to the Department of Education.

c. Quality. A school system shall annually provide students with textbooks and materials of instruction that are useable and functional. Upon initial adoption textbooks and

materials must conform to the Minimum Manufacturing Standards and Specifications for Textbooks as developed by the National Association of State Textbook Administrators (NASTA) in consultation with the American Publishers and Book Manufacturers' Institute.

d. Access. A school system shall, based on input from local teachers, principals, administrators, and others, determine how access to textbooks in *core subject areas* will be made available to students. School systems must ensure that each child within the classroom will have equal access to any available instructional materials. School systems shall also *inform each parent/guardian in writing* at the beginning of each school year of the method of access to textbooks which has been selected for each course or grade level. A contact person and phone number should be provided.

i. Options for providing textbook access for students may include:

- (a). textbooks provided for each student;
- (b). textbooks provided via a classroom set;
- (c). textbooks provided as both a classroom set and take home copy for each student; or
- (d). other specified arrangement as deemed appropriate to the subject area by local officials.

3. Textbooks for Areas Other than Core Curriculum

a. Local school systems shall fully implement adoption in subject *areas other than core* as soon as funds will permit or as programmatic needs dictate. School systems must ensure that each child within the classroom will have equal access to any available instructional materials for non-core subject areas.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§507. Local Adoption Procedures

A. Purpose

1. To assure local public school systems have a defined procedure for textbook adoption.
2. To provide an opportunity for appropriate input in textbook selection.
3. To ensure curriculum content that reflects current national, state, and local standards of instruction.

B. Each local school system will hold a formal textbook adoption. The local textbook adoption process shall focus on those textbooks selected at the state level. *AFTER* state committee textbook recommendations are approved by the Board of Elementary and Secondary Education, within *thirty days* local school systems will be provided the list of state approved textbooks. Additional information regarding cost items included with the basal text, as well as all items to be given at no cost to local school systems, shall also be made available.

C. Local Adoption Procedures

1. An Established Time Line

a. Local school systems *must* hold textbook adoption each year following BESE approval of newly adopted texts. Districts are encouraged to hold local adoptions between *November and the end of March*. Participation in the State

Textbook Caravan is optional but may be used as a part of the local adoption procedures (see §507 D).

b. The SDE must be notified as to the locally adopted textbooks and the school system's Plan for Implementation by *June 30* in the school year of the adoption.

2. Properly Constituted and Trained Local Adoption Committee

a.i. All textbook adoption committees shall contain a membership of not less than one-third of which are teachers, not less than one-third of which are parents who are not public educators, and the remainder of which are other persons. For purposes of this section, the term *teacher* shall mean any person employed by a city or parish school board, who, as a condition of employment, is required to hold a valid teaching certificated issued by the Department of Education (R.S. 17:415.1).

ii. Diverse membership is encouraged to include parents, nonpublic educators, special educators, district-level curriculum supervisors, classroom teachers, and others who have interest and or knowledge of curriculum and subject matter under adoption.

b. Local adoption committee members are to receive special training in textbook selection criteria (i.e., knowledge of subject area content standards and assessments), voting procedure and integrity of interaction with publishers.

D. Participation in State Textbook Caravan

1. School systems are encouraged to participate in the State Textbook Caravan as scheduled by the SDE. The State Textbook Caravan affords all school systems an equal opportunity to preview all state adopted textbooks and ancillary materials with onsite availability of publishers to answer questions.

2. All school systems, public, private and parochial, are eligible to participate in the State Textbook Caravan.

E. Provision for Publishers' Contact with Local School District; Optional Requests for Local Presentations

1. Local school systems are strongly encouraged to *establish a formal policy* regarding the method, time line, and procedure for publishers seeking to have contact with personnel at central offices and local school sites. Such policies may also address the provision of written materials to school and central office personnel as well as attendance of school and central office personnel at functions sponsored by publishers. Local school systems are further encouraged to *inform publishers* of local policy.

2. Local school systems may use the State Textbook Caravan as the single opportunity for publishers' presentations within the parish OR as a vehicle for identifying those publishers to be called for a local presentation.

3. *At the district's request*, one additional presentation by a publisher will be permitted at the local level for clarification of information on textbooks under consideration for adoption. However, such follow up presentation *may not occur* prior to conclusion of the State Textbook Caravan.

F. Sampling of Textbooks by Publishers; Violation will disqualify publisher.

1. Publishers are to furnish examination copies *only at the written request* of the local school system textbook adoption coordinator after state committee review.

2. Samples are to be *limited to* sufficient quantities for the designated local adoption committee members only, as determined by the local system textbook adoption coordinator.

3. Other persons choosing to examine samples *must* use samples provided by the SDE at predesignated sites for public review.

4. *No other examination copies* will be permitted.

5. Publishers must notify local school systems, in writing, of the need to have samples returned. If notified by publishers, all samples received by local school systems must be picked up by the publisher within *thirty days* after the local adoption.

6. Publishers must make all necessary arrangements for sample returns at publisher's expense.

G. Local Selection of Textbooks

1. An evaluation instrument must be used by local school districts. Alignment with state adopted content standards and state and local curriculum objectives, where applicable, *shall* be a primary consideration in the evaluation process. Local school districts may model state developed procedures and evaluation instruments.

2. An official summary report of local evaluation results is to be kept on file for a minimum of three years.

H. Notifying State of Local Textbook Selections

1. Local school districts shall notify the SDE of all textbooks selected by discipline and course via the local Plan of Implementation. Said notification must be made by *June 30* in the school year of the state adoption (Refer to Records and Reporting Requirements).

I. Notifying Schools of Locally Selected Textbooks

1. Each school shall be provided a list of all components of the locally adopted basal textbook in each subject area, including those items which may be purchased with textbook funds, and those items to be supplied by the publishers at no cost.

2. Local school systems may share with each school a list of the strengths and weakness of all textbooks selected.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§509. Ordering

A. All local systems must establish the amount of monies to be used for textbooks, library books, and school supplies from their MFP allocation. This breakdown shall be forwarded to the Office of Student and School Performance with its *Plan of Implementation* for the purchase of textbooks each year. The Plan of Implementation shall be submitted by *June 30* of each year.

B. Once the LEA determines the need of the schools based on the adoption schedule, orders may be placed with the SDE-designated textbook depository or directly with publishers.

C. When placing orders with the depository, the following schedule is suggested for ordering:

1. March 15 - May 15. Initial Ordering (*suggested time for ordering textbooks to be placed in schools for the first time in the coming school year).

2. May 15 - October 15. Second Ordering (*suggested time for revising initial order, ordering replacement or additional copies of texts already in use in the schools).

3. School systems may place orders in advance of the starting dates of each cycle.

D. All orders placed with the depository shall be delivered within 90 days of the end of each ordering cycle unless a later delivery date is requested by the LEA. Publishers and or the state textbook depository may be fined 1 percent of all outstanding balances on orders not delivered within ninety (90) days of the end of each ordering cycle, or within thirty (30) days for orders not placed during the ordering period, based upon complaints of local school districts and follow up review by the SDE. See §1901 of Appendix F.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§511. Direct Order of Textbooks

A. Effective January 1, 1998, HB 1057 of the 1997 Regular Session provides that any *governing authority* of a public elementary or secondary school may order and receive state adopted textbooks directly from a textbook publisher. Textbooks purchased directly from the publisher must be the same price or lower than can be purchased from any other source.

B. Publishers may be fined 1 percent of all outstanding balances on orders not delivered within ninety (90) days of the end of each ordering cycle, based upon complaints of local school districts and follow up review by the SDE. (See §519 and §1901 of Appendix F.)

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§513. Waivers

A. Purchasing Books not on the Approved State List

1. A local school system or school may use *up to but not to exceed 10 percent of its textbook allotment* for the purchase of non-state adopted textbooks and materials of instruction. Approval by the State Board of Elementary and Secondary Education is not required.

B. Special Waiver to Exceed 10 percent of Textbook Allotment on Non-adopted State Textbooks and Materials of Instruction

1. A local school system, with the approval of its local school board or chartering authority, and may petition in writing the State Department of Education for permission to spend *in excess of the 10 percent* allowance for non-adopted state textbooks. The Office of Student and School Performance will present the petition to BESE for action and notify systems of the results.

2. Requests shall be accepted from *March through May 31*. Textbook orders may not be processed until waivers have been approved. The last month for BESE action on such waivers shall be June. Any extenuating circumstances shall be handled on an individual basis.

C. Purchase of Instructional Materials for Grades K-3

1. The State Board of Elementary and Secondary Education, at its meeting of June 22, 1989, exercised those powers conferred by the emergency provision of the Administrative Procedure Act, R.S. 49:953 B, and adopted the following guidelines to allow state textbook funds to be used to purchase instructional materials for Grade K-3 as recommended by the Department of Education.

a. For classes K-3, the school superintendents are authorized to use textbook funds to purchase textbooks and other materials that can be used to support the instruction in these four elementary grades (K-3).

b. The major emphasis in selecting instructional materials for K-3 should be on manipulative and concrete materials such as blocks, dramatic/housekeeping toys, manipulative (puzzles, legos, etc.), gross motor materials (jump ropes, balls, etc.) and other manipulative materials.

c. The characteristics and needs of the child in grades K-3 should be considered when selecting appropriate materials.

D. Special Purchase for Gifted Programs

1. The State Board of Elementary and Secondary Education may authorize the Louisiana School of Math, Science and the Arts and other parish or city school boards with programs for *gifted students* to select and purchase textbooks *not included on the lists adopted* by the Board pursuant to the provisions of this Section, provided that such authorization shall be on an ad hoc basis and shall be subject to *prior approval by the Board*. Such purchases may be made using funds appropriated by the Legislature for the purchase of textbooks as provided for herein.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§515. Records and Reporting Requirements (see also, Bulletin 741, 1.026.12-13; 3.026.12)

A. School systems shall maintain an inventory system for use in submitting records and reports, as required by the Department of Education, and include all textbooks on hand at the beginning of the session, as well as records of those added, worn out and in need of replacement.

1. Local Plan of Implementation

a. Local school systems shall submit an annual *Plan of Implementation* for textbook adoption to the SDE by June 30 of each year. Such plans shall document local implementation of adequate and appropriate instructional materials. Specific forms for this purpose will be provided by the SDE. In addition, an ongoing textbook inventory system should be used to maintain records for a minimum of three years.

b. The SDE must be notified of all textbook titles selected by discipline/course. This plan must address the number of books to be ordered by subject, course, and grade level. The school system shall *indicate which of the following options* will be applicable to the latest subject adoption:

- i. textbooks will be provided for each student;
- ii. textbooks will be provided via a classroom set;

iii. textbooks will be provided as both a classroom set and take home copy for each student;

iv. other specified arrangement as deemed appropriate to the subject area by local officials.

2. Textbooks Used By Blind and Visually Impaired Students

a. School systems in need of books and materials for use by blind and visually impaired students should begin by contacting the school district's special education supervisor to ensure the student has an approved Individualized Educational Plan (IEP) that states the need for braille or large print materials. The Local Textbook Implementation Plan submitted to the State Textbook Administrator each year should include a statement of need and a plan for securing textbooks for students who are blind or visually impaired. This plan should include the following:

i. procedures for requesting/ordering from Louisiana Learning Resource System (LLRS);

ii. procedures for securing textbooks not available from LLRS;

iii. number of students included on the census of students with visual impairments compiled by LLRS school code;

iv. number of students reported visually impaired and or blind to the Student Information System (SIS) at each school code.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§517. Textbooks for Home Study Program

A. The following procedures shall be used for ordering of textbooks to be used in approved home study programs. Parents and or guardians *must* proceed through the following steps in order to access textbooks for students in home study:

1. submit application to SDE and obtain approval for participation in the Home Study Program;

2. present copy of approved Home Study Application form to the local Textbook Supervisor or designee at local school board office;

3. select the textbooks and/or materials needed from the listing provided by the textbook personnel at each local school board office (only materials approved by SBESE and adopted by local school districts are provided, *when available*);

4. provide a deposit equal to fifty percent (50 percent) of the replacement cost. Such deposit will be returned when the books are returned. If books are not returned or paid for, the parent or legal guardian shall not be eligible to continue participation in the textbooks rental program until all textbooks debts are cleared.

NOTE: Only one grade level set of texts per child per subject is available at any single time.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13 (A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236-236.1; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§519. Report on Status of Local Ordering—Late Delivery by Publishers

A. LEAs shall inform the SDE of any publisher who fails to provide textbooks within ninety(90) days of the end of each ordering cycle, or within thirty (30) days for orders not placed during the ordering period. Such notice shall be on forms prescribed by the SDE. (See §1901 of Appendix F).

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§521. Sale of Textbooks No Longer in Use

A. LEAs shall request permission of the SDE to dispose, sell, or donate out-of-date or unusable or unsalable textbooks. *Limitation: Textbooks no longer in use may not be sold to anyone whose intent is to resell them.*

B. In order to obtain the greatest utility from out-of-use textbooks and to assist local school districts and schools, the following options are available to local school districts.

1. If a textbook or library book has been *out of use for over a year* a parish or city school board may, with the *approval of the [State] board*, donate said book to any public hospital, any jail or prison, or any public institution, or to any individual for private use free of charge.

a. Any textbook or library book which a parish or city school board is unable to sell or donate after being out of use *in excess of eighteen months*, or any textbook or library book which is deemed by said board to be unusable or unsalable, shall be *disposed* of in an appropriate manner.

b. A parish or city school board, with the prior approval of the State Board of Elementary and Secondary Education, may by the debinding and shredding method, dispose of any textbook or library book that has not been sold or donated and has been out of use parish wide in excess of eighteen months. If the debinding and shredding method is chosen the following procedures are to be followed:

i. submit request(s) to the SDE between March - June 30 of each year;

ii. upon submission of request, local school districts shall notify all SBESE and Brumfield-Dodd approved non-public schools within their district of the availability of these textbooks by disciplines, giving them *three weeks* to express their interest in securing any of these textbooks;

iii. the local school district may select a vendor and enter into a contract for the debinding and shredding of those books no longer in use;

iv. the local school district shall maintain appropriate records for *three years*;

v. the local school district shall derive all funds from the debinding. Funds derived from such sale shall be used by the parish or city school board *solely* for textbook or library book purchases.

c. *The reproduction of any textbook or library book no longer in use by a parish or city school system and the use of multiple copies of such books by organized groups or by an educational agency or entity is prohibited, per R.S. 17:8.1.*

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§523. Reasonable and Proper Care for and Control over Textbooks and Other Materials of Instruction

NOTE: This policy shall also be applicable to instructional materials, supplies, and equipment (see also Bulletin 741)

A. HB 2175, of the 1997 Regular Session, authorizes local school systems to establish methods by which responsibility for reasonable and proper care for and control over textbooks and other materials of instruction is ensured. The SDE recommends that Student Handbooks, issued to students at the beginning of each school year, include a policy statement that stipulates responsibility for proper use and control over textbooks and other materials of instruction that are on loan to the student during the school year. Signature lines should be included for both student and parent/legal guardian acknowledgment of responsibility. In addition, a contact name and phone number should be provided. Payment plans for restitution by parents/guardians may be specified.

B. Each school system, as part of their responsibility to ensure proper care and control of textbooks, shall adopt procedures which hold students and parents/guardians responsible for exercising reasonable and proper care of textbooks and materials of instruction.

C. Such procedures may provide that parents and/or legal guardians may be required to compensate the school district for lost, destroyed, or unnecessarily damaged books and materials, and for any books which are not returned to the proper schools at the end of each school year or upon withdrawal of their dependent child. Under no circumstances may a student of school age be held financially responsible for fees associated with textbook replacement.

D. Compensation by parents or guardians may be in the form of monetary fees or community/school service activities, as determined by the school governing authority. In the case of monetary fees, fines shall be limited to no more than the replacement cost of the textbook or material, but may, at the discretion of the governing authority, be adjusted according to the physical condition of the lost or destroyed textbook. A school system may waive or reduce the payment required if the student is from a family of low income and may provide for a method of payment other than lump-sum payment.

E. In lieu of monetary payments, both school systems and parents/guardians may elect to have students perform school/community service activities, provided that such are arranged so as not to conflict with school instructional time, are properly supervised by school staff, and are suitable to the age of the child.

F. School systems may withhold the grades of a student if a parent or guardian fails to adequately compensate the school or school system for lost, destroyed, or unnecessarily damaged books (through monetary fees or community/school service activities).

G. However, under NO circumstances may a school or school district refuse the parent/guardian the right to inspect relevant grades or records pertaining to the child NOR may the school or school district refuse to promptly transfer the records of any child withdrawing or transferring from the school, per requirements of the Federal Family Educational

Rights and Privacy Act. Transfer of records shall not exceed 45 days from the date of request.

H. Under NO circumstances may a school or school district deny a student promotional opportunities, as a result of failure to compensate the school district for lost or damaged textbooks. Students shall not be denied continual enrollment each grading period nor re-entry in succeeding school years as a result of lost or damaged books.

I. Students shall not be denied the use of a textbook during school hours each day. Each school system shall annually inform parents and/or legal guardians of the locally adopted procedures pursuant to state law and regulation, regarding reasonable and proper control of textbooks (See also Bulletin 741, *School Administrators Handbook* for policy regarding this legislation).

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§525. Ongoing Inventory System

A. School are required to develop and maintain an ongoing textbook inventory system. Records should be kept on file a minimum of three years. Data elements should include those requested for the district's Plan of Implementation.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 7. Publishers' Responsibilities

§701. Requirements for Publishers' Participation in State Textbook Adoption

A. Publishers are *required to follow the procedures* below in order to be eligible to participate in any state textbook adoption process. Publishers *must* provide the required information to the Department of Education by the specified time each year in order for a bid to be accepted for consideration.

B. An *Intent to Participate* form shall be mailed during each adoption year to publishers whose names and addresses are on file in the Department of Education.

C. Publishers are *required to file an Intent to Participate form* with the SDE by the assigned date in March each year *in order to receive a full textbook submission packet*.

D. Publishers are required to provide proof of registration with the Louisiana Secretary of State's Office in order for contracts to be legally negotiated. It is the *responsibility of the publisher* to ensure that proper forms are completed and that the company is registered according to state laws and regulations.

E. *Publishers are encouraged to submit such documentation along with the return of the Intent to Participate form*. However, publishers may submit the verification at a later date, but *no later than October 1* of each year. Under *no* circumstances will a contract be negotiated with a publisher without such documentation.

F. Publishers are required to provide the name, address, telephone, fax number, and electronic mail address, if applicable, of one local representative and one corporate

representative of the company. The designated representatives should be those officials who are authorized to speak on behalf of the company within the State of Louisiana, and at the corporate level, are authorized to enter into contract agreements with the Department of Education/BESE. Such information shall be *submitted with the Notice of Intent to Participate form* to be submitted each year by interested publishers.

G. Publishers are required to *provide written notification* to the Office of Student and School Performance of changes in agents or representatives, addresses or phone numbers. *No more than two (2) names and addresses may be designated to receive information at any one time for any one person, firm, corporation or organization*.

H. Publishers who are interested in submitting textbooks and materials of instruction for consideration are *required to have representation at the Orientation*, to be scheduled annually by the SDE. Failure to have representation will result in disqualification of the publisher.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§703. Publishers' Formal State Textbook and Materials of Instruction Submission

A. Publishers shall submit a formal response on state developed forms.

1. State Submission Forms for Textbooks and Materials of Instruction

a. Publishers must submit the *Intent to Participate Form* by the prescribed deadline each year in order to receive the Invitation Circular Letter and accompanying state textbook submission packet.

b. All state forms must be fully and accurately completed. Publishers' submission forms must clearly state each book or series of books the publishing company intends to offer in the appropriate subject area and grade level.

c. All submissions must be received in the Office of Student and School Performance, Department of Education building, by *4:30 p.m. on the date specified each year*. There will be *no* exceptions.

d. Failure to complete all required information on the submission form may result in disqualification of the publisher.

e. Publishers are required to submit detailed *manufacturing standards* on each book listed on the state submission forms. Manufacturing standards must be submitted *along with the submission forms*.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§705. Notification of Required Hardware, Software, Special Equipment Needed by State Textbook Adoption Committee Members to Review Textbooks and Materials Submitted by Publishers

A. Publishers are required to submit in writing to the SDE by the designated time each year, a detailed list of *hardware*,

software, and any special equipment which may be needed by State Textbook Adoption Committee members for review of textbooks and materials of instruction.

B. Publishers *will be* responsible for costs associated with rental of needed equipment by State Committee members, if other means are not available to the member. Publishers will be billed by the SDE for rental of such equipment.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§707. Submission of Correlations to State-Approved Content Standards/Curriculum Guides

A. Publishers are required to submit in writing detailed *correlations to State Content Standards/Curriculum Guides*, for subject/content areas under adoption by the specified time each year.

B. Specific requirements shall be issued by the SDE regarding the format and methods to be used in preparing and reporting of correlations.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§709. Textbook Samples for Review by State Textbook Adoption Committee Members and State Citizens

A. Publishers are *required to place a fixed label on the outside of each book* to be mailed to Committee members or to Public Review sites. Each label shall clearly identify the following, in this order:

1. traditional; non traditional; thematic;
2. subject area which corresponds to the state bid form;
3. applicable grade level;
4. title;
5. teacher or student edition;
6. publisher; and
7. copyright date.

B. A *checklist of titles* should be enclosed with each box.

1. The checklist *should include the following, in this order*:

- a. book title;
- b. corresponding state bid subject area;
- c. applicable grade level;
- d. teacher or student edition;
- e. publisher; and
- f. copyright date.

2. In addition, a list of *all textbooks* submitted for state adoption is required in order to determine whether total shipments from the publisher have arrived.

C. Publishers *shall NOT provide any item of value*, no matter how insignificant, to State Committee members (i.e.. NO mugs, book bags, pens, or other token of appreciation) when samples are distributed. *NO brochures or marketing information shall be included with shipments.*

D. Publishers shall send appropriately labeled samples of all basal and teachers' editions listed on submission forms to *location(s) designated by the Department of Education.*

E. Publishers should obtain a returned signed receipt as verification that *all* titles submitted for state review have been received at designated location(s). Publishers shall be responsible for ensuring that books are received at designated location(s) for subsequent review by State Textbook Adoption Committee members. A summary check list that corresponds with materials submitted for review is required in addition to individual packing lists.

F. If samples are *not received* by the SDE-specified deadline, or are not of sufficient quantity for distribution, the book *shall be disqualified* from the adoption process.

G. The publisher will have the responsibility of making arrangements to have materials picked up from the Committee members at the conclusion of the voting process. If the publisher fails to make the necessary arrangements within 30 days after the adoption, the materials will become the property of the Committee members.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§711. Submission of Galley Proofs

A. Galley proofs may be submitted to designated location(s) as samples for review by State Committee members *provided that the finished books will be available by the date specified by the SDE each year.*

B. A *galley proof* shall be defined as the *final bound* manuscript set in type with all corrections made and the elements of the pages arranged in their final form [i.e., only book binding required for completion].

C. In the case of galley submissions, publishers *must* also submit detailed manufacturing standards which will be used when the final book is published.

D. Publishers shall pick up galleys from the designated public review sites and replace them with finished books prior to the State Caravan.

E. Any new or updated editions of the originally adopted book must be provided to the state of Louisiana at the same price and terms as stipulated in the bid form and state contract. *Updated editions or additions to complete a series previously adopted must be submitted to the SDE for review and recommendation to BESE by the specified time each year.*

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§713. Samples for Public Review

A. *Publishers* are required to supply an adequate quantity of textbooks/materials of instruction for placement at the public review sites.

B. The SDE shall arrange sites for public display of proposed textbooks and shall provide a written form for public comment. *Copies of basal textbooks being considered for adoption shall be placed in cooperating public libraries in those cities named in La. R.S. 17:415.1: New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lake Charles, Lafayette and Houma, with the addition of Natchitoches.* Public libraries must be contacted initially for use of their

facilities for public display, and if they are unable to accommodate the display, the State Department of Education may select an alternate site.

C. Publishers shall pick up galleys from the designated regional library/ public review sites and replace them with finished books prior to the State Caravan.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§715. Role of the Publisher During State Committee Review

A. The SDE shall inform all publishers submitting an Intent to Participate form of the names of appointed State Committee members. Publishers shall have *no personal contact* with the State Committee members once names of Committee members are released by the SDE *and until such time as the state adoption process has been completed.*

B. *Personal contact shall be defined as any one-on-one, written, or third parties contact, other than the presentation of materials or provision of SDE requested materials at state-requested or conducted textbook adoption proceedings.*

C. Publishers shall not attempt to influence the deliberations or vote of a Committee member, either directly or through third parties. *Violations of this requirement will result in immediate disqualification of the publisher.*

D. Publishers shall provide nothing of value to any committee member at any time during, or after the adoption process.

E. Publishers shall be required to file written affidavits regarding any contact with State Textbook Adoption Committee members AND with State Board of Elementary and Secondary Education members.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§717. Written Questions and Responses to Questions Regarding Textbooks Under Consideration

A. Each State Textbook Adoption Committee member may formulate and prioritize relevant questions to be addressed by publishers on each book under consideration for adoption. Questions shall be forwarded to the SDE by each Committee member on forms prescribed for such purpose by a date to be determined by the SDE.

B. *Questions may address the physical characteristics and layout, factual content of the book, relationship to state content standards and assessment, organization, presentation and sequencing of content, and any other area specified for evaluation on the state evaluation form. Questions may not address items contained on the Ancillary Materials Bid Form, Free Materials Bid Form, including in-service offerings. Questions will be forwarded to publishers.*

C. *Written responses shall be developed by publishers according to SDE instruction. Failure to respond according to the specified time line will disqualify the book for consideration of adoption.*

D. *Responses by publishers may not address items contained on the Ancillary Materials Bid Form, Free Materials Bid Form, including in-service offerings.*

E. Sufficient copies of the *written responses* shall be forwarded to the SDE by respective publishers according to the specified time each year. The SDE shall be responsible for forwarding copies of the written responses to State Committee members.

F. All meetings of the textbook adoption committees *shall be open to the public.* The SDE shall post official public notice of all meetings of the State Textbook Adoption Committee.

G. Each publisher shall be invited to a question/answer session during which time State Committee members may seek further clarification to written responses provided by publishers or pose additional questions for publishers' response. Publishers shall be allowed to discuss how their basal and teacher's editions align with the state content standards and assessment program. *Publishers may not address ancillary or free materials proposed for addition after SBESE approval of basal.*

H. Publishers shall be allocated a maximum time period for the question/answer session, as specified by the SDE.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§719. Publisher Conduct During the State Caravan

A. Publishers *shall NOT* provide any item of value, no matter how insignificant to State committee members (i.e., NO mugs, book bags, pens, or other tokens of appreciation) when samples are distributed. *NO brochures or marketing information shall be included with shipments.*

B. Publishers shall NOT solicit names or make requests related to samples.

C. No sample books are to be removed from the Caravan.

D. Publisher fees will be collected to cover costs of refreshments at each location.

E. Folders of product information may be offered.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§721. Obligations to Provide Textbooks and Materials of Instruction within Prescribed Time Periods

A. Publishers must ensure that textbooks are delivered to local school systems within 90 days of the end of the appropriate ordering cycle as specified. The SDE may authorize fines on textbook publishers who fail to deliver ordered materials within the 90 day time line. Said fine shall equal 1 percent of the outstanding balance for any order that has not been received by the local school system within 90 days after the closing date of the appropriate ordering cycle.

1. State Contract for Adopted Textbooks and Materials of Instruction

a. The State Board of Elementary and Secondary Education, at its meeting of June 28, 1990, exercised those powers conferred by the emergency provisions of the Administrative Procedure Act, R.S. 49:953B, and approved the following amendments to textbook adoption procedures, *effective June 28, 1990*:

In the 1990-91 adoption and all other adoptions thereafter, all titles approved through the state textbook adoption process will carry a definite contract not to exceed seven years.

b. The state textbook adoption shall be limited to Basal Textbooks and Teacher's Edition only. Ancillary materials will carry a fixed cost for the life of the contract. Free materials, included in the formal submission by publishers, must clearly indicate period of availability, if other than the seven-year contractual period.

c. Publishers with materials under contract with the State of Louisiana may add materials during the specified time each year. The *addition* can be only textbooks that complete an adopted series, ancillary materials that accompany an adopted basal program, or a new copyright edition of an adopted textbook. If a new copyright edition is requested for addition it *must* be priced as the same cost of the copyright edition under contract. At any time during the life of this contract, if the publisher should charge less to others for materials under contract, publisher agrees to reduce the price to the State of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§723. Braille Accessibility (R.S. 17:1985; SCR 15 of 1997; SCR 149 of 1997)

A. SCR15, of the 1997 Regular Session, requires the State Board of Elementary and Secondary Education (SBESE) to coordinate a statewide system of providing braille books to visually impaired students by tracking braille books already available and supplying funds for those needed. In addition, SCR 149, of the 1997 Regular Session, provides for *access and use of technology* by blind and visually impaired students.

B. Publishers shall furnish, within 90 days of state adoption, to the American Printing House for the Blind computer diskettes for state-adopted literary subjects in an electronic text file from which braille or large print versions can be produced. Files will be used by blind or visually impaired students in Louisiana. Electronic text files for nonliterary subjects, including natural science, computer science, mathematics, and music must be provided when braille specialty code translation software is available.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 9. Appendix A

NOTE: Forms contained in the Appendix are subject to revision by SDE.

§901. Adoption Cycle

**Louisiana State Textbook Adoption Cycle:
Core Subject Areas Are Adopted Every Seven Years.**

1998-99	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
Social Studies K-12	Language Arts K-8	Language Arts 9-12	Vocational Agricultural	Science K-12	Foreign Language	Math K-12
	Grades 6-12 Literature	Reading K-8	Business Education	Health and Physical Education	Handwriting Music/Fine Arts	Computer Science
	Computer Literacy		Home Economics	Computer Literacy		
			Health Occupations			

NOTE: Separate categories for special education are no longer adopted.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 11. Appendix B
§1101. Publisher Affidavit

State of Louisiana
Department of Education
State Textbook Adoption

PUBLISHERS' AFFIDAVIT

I, _____ (printed name), an authorized representative of the _____ publishing company (printed name), do hereby certify the following:

- A) No representative of my company or affiliate company will try to influence the vote of a State Social Studies Adoption Committee member, either directly or through a third party;
- B) No item of value, no matter how insignificant, will be given to any *State Committee member* by my company after the Louisiana Department of Education (LDE) publicly discloses the names of the State Committee members. Items of value shall include money, trips, meals, mugs, book bags, pens, and any other item of value or token of appreciation.
In the event that my company has within *the last year* given any item of value to a person named as a State Committee member, I shall immediately (*within 10 days* of the naming of the State Social Studies Adoption Committee) inform the LDE in writing of such gift. The written correspondence shall describe the nature of such gift and shall be mailed to the LDE Textbook Administrator.
- C) I assure that my company has no affiliation or business arrangement with any State Adoption Committee member.
In the event that my company has within the *last year* had an affiliation with or any business arrangement with a person named as a State Committee member, I shall immediately (*within 10 days*) of the naming of the State Social Studies Adoption Committee) inform the LDE in writing of such relationship. The written correspondence shall describe the nature of the business arrangement or affiliation and will be mailed to the LDE Textbook Administrator.
- D) I assure that I will comply with all directives of the State Board of Elementary and Secondary Education and the LDE regarding materials to be provided and procedures to be followed during the State Social Studies adoption process.

Signature of Authorized Local Representative

Date

NOTE: REQUIRED FORM—Must be returned to LDE by _____
Date

Revised 1998

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 13. Appendix C
§1301. State Adoption Committee Affidavit

State of Louisiana
Department of Education
State Textbook Adoption

STATE ADOPTION COMMITTEE MEMBER'S AFFIDAVIT

I, _____ (printed name), do hereby certify the following:

A) No representative from any publisher or affiliated company will influence my vote, either directly or through a third party;

B) No item of value, no matter how insignificant, will be accepted from publishers or affiliated companies once the Louisiana Department of Education (LDE) discloses the names of the State Committee members. Items of value shall include money, trips, meals, mugs, book bags, pens and any other item of value or token of appreciation.

In the event that I have within the *last year* taken any item of value from a publisher submitting materials for adoption, I shall immediately (*within 10 days* of naming the State Textbook Adoption Committee) inform the LDE of such gift. The written correspondence shall describe the nature of the gift and shall be mailed to the LDE Textbook Administrator;

C) I assure the Department that I have no affiliation or business arrangement with any Publisher or its affiliated company. In the event that I have within the *last year* had an affiliation with or any business arrangement with a publisher submitting materials for adoption, I shall immediately (*within 10 days* of naming the State Textbook Adoption Committee) inform the LDE in writing of such relationship. The written correspondence shall describe the nature of the business arrangement or affiliation and shall be mailed to the LDE Textbook Administrator;

D) I assure that I will comply with all directives of the State Board of Elementary and Secondary Education and the LDE regarding materials to be provided and procedures to be followed during the state textbook adoption process;

E) I assure the Department that I will attend two mandatory meetings, the orientation to be held _____
_____ and full committee review _____
(Date) (Date)

Signature of State Adoption Committee Member (Date)

NOTE: REQUIRED FORM: Return to LDE by _____.
Attn: Jackie Bobbett
626 N. 4th Street, Room 740
Baton Rouge, LA 70802
PH: (225) 342-3599
FAX: (225) 342-3463

Revised 1998

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 15. Appendix D
§1501. Local Adoption Subcommittee Affidavit

State of Louisiana
Department of Education
State Textbook Adoption

LOCAL ADOPTION SUBCOMMITTEE MEMBER'S AFFIDAVIT

I, _____ (printed name), do hereby certify the following:

A) No representative from any publisher or affiliated company will influence my vote, either directly or through a third party;

B) No item of value, no matter how insignificant, will be accepted from publishers or affiliated companies once selected by the State Adoption Committee Member. Items of value shall include money, trips, meals, mugs, book bags, pens and any other item of value or token of appreciation.
In the event that I have within the *last year* taken any item of value from a publisher submitting materials for adoption, I shall immediately (*within 10 days*) inform the State Adoption Committee Member in writing of such gift. The written correspondence shall describe the nature of the gift and shall be mailed to the LDE Textbook Administrator;

C) I assure the Department that I have no affiliation or business arrangement with any Publisher or its affiliated company.
In the event that I have within the *last year* had an affiliation with or any business arrangement with a publisher submitting materials for adoption, I shall immediately (*within 10 days*) inform the State Adoption Committee Member in writing of such relationship. The written correspondence shall describe the nature of the business arrangement or affiliation and shall be mailed to the LDE Textbook Administrator;

D) I assure that I will comply with all directives of the State Board of Elementary and Secondary Education and the LDE regarding materials to be provided and procedures to be followed during the State Textbook adoption process;

Signature of Local Adoption Subcommittee Member

Date

Note: REQUIRED FORM: -- To be collected by State Committee Member

Revised 1998

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 17. Appendix E
§1701. Public Comment Form

State of Louisiana
Department of Education
Division of School Standards, Accountability, and Assistance
1998 State Textbook Adoption
PUBLIC COMMENT FORM

Forms must be typed or neatly printed. A separate form should be completed for each textbook.

The State is currently considering textbooks and materials of instruction for social studies classrooms, grades K-12. This form is intended to allow Louisiana citizens to make comments regarding those textbooks under consideration.

Publisher: _____ Subject Area: _____
 Title: _____ Author: _____
 Grade Level: _____ Copyright: _____ Name of person making comment: _____
 Address: _____ Area Code/Telephone Number: Home () Work: ()

Parish of Residence: _____

Do you represent: Yourself An Organization (Name): _____

Do you have children of school age? Yes No;

If yes, what type of school do they attend? Public Non-Public (Receive State Funds) Non-Public (Does not Receive State Funds)

I would like to present my comments in the form of an oral presentation before the state committee(s) involved with adoption.

The following information must be completed:

I object to the following materials in this textbook. Please be specific, i.e. cite passages, pages, ideas, pictures, chart, copyright, etc. (Please use additional sheets if needed.)

Have you personally reviewed the material in its entirety? Yes No Segments Only

Is your objection to this material based upon: Personal exposure? Reports you have heard? Both?

Are you in anyway affiliated with a publishing company presenting material for adoption? Yes No

Would the publication have merit if the objectionable pages were removed? **Explain:** _____

 Signature

 Date

Form must be returned by 4:30 p.m. December 28, 1998 to Jackie Bobbett, State Textbook Administrator
Division of School Standards, Accountability, and Assistance Louisiana Department of Education
P. O. Box 94064
Baton Rouge, LA 70804-9064
FAX: (504) 342-5736

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 19. Appendix F
§1901. Notice Of Publisher's Failure To Deliver

STATE OF LOUISIANA
DEPARTMENT OF EDUCATION

NOTICE OF PUBLISHER'S FAILURE TO DELIVER
STATE ADOPTED TEXTBOOKS AND MATERIALS OF INSTRUCTION IN
ACCORDANCE WITH STATE CONTRACTS

School districts should complete the following form and *submit an original signed copy to the state textbook administrator* in the event that state adopted textbooks and materials of instruction are not delivered within 90 days of the last ordering cycle. Upon approval by the State Department of Education, local school systems may fine a publisher 1 percent of the outstanding balance of delinquent order. State contracts stipulate that failure to deliver textbooks and materials of instruction within 90 days of the last ordering cycle may render state contracts null and void.

Date _____

Name of School District _____ Name of Publisher _____

ISBN NO. _____ Title of Book _____

_____ (Mo/Day/Year)

Date order was placed (attach copy of invoice)

Briefly explain steps taken to date to trace/recover state adopted textbook order:

Signature District Superintendent

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Chapter 21. Appendix, State Laws

§2101. Free School Books

The legislature shall appropriate funds to supply free school books and other materials of instruction prescribed by the State Board of Elementary and Secondary Education to the children of this state at the elementary and secondary levels. (Article VIII, Section 13(A) of the Louisiana Constitution of 1984)

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2103. Duties, Functions, And Responsibilities Of Board [R.S. 17:7(4)]

The board shall prescribe and adopt free school books and other materials of instruction for the children of this state at the elementary and secondary levels and all other schools and programs under its jurisdiction for which the legislature provides funds, in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2105. School Books Prescribed By Board; Contracts With Publishers [R.S. 17:8]

A.(1)(a) The board shall prescribe and adopt and shall exercise control and supervision over the distribution and use of free school books and other materials of instruction for use in elementary and secondary schools and special schools, as provided by Part IV of Chapter 1 of Title 17 of the Louisiana Revised Statutes of 1950, and shall adopt necessary rules and regulations governing their use by schools, parish and city school boards, and parish and city superintendents of education. Such rules and regulations shall include but not be limited to a requirement that each parish and city school board shall adopt by not later than the beginning of the 1991-1992 school year procedures permitting any public school student to have use after regular school hours during the week and on weekends of any school book used to teach reading. Any public school student using any school book pursuant to the provisions of this Subsection shall be responsible for such school book. These procedures shall not be applicable to basal readers and programs.

(b)(i) All school students and persons responsible for a student's school attendance shall be accountable for exercising reasonable and proper care for and control over school books and other instructional materials, supplies, and equipment.

(ii) Notwithstanding any law or rule or regulation to the contrary, the governing authority of an elementary or secondary school may withhold the grades of a student who does not reimburse the school or school system for the students's failure to exercise reasonable and proper care for and control over school books or other instructional materials, supplies, and equipment.

(iii) In accordance with the authority granted to the State Board of elementary and Secondary Education by the provisions of this Subsection, the board shall formulate, develop, adopt, and provide for implementation by not later than January 1, 1998, by each governing authority of a public elementary or secondary school of appropriate policies and procedures consistent with the provisions of this Subparagraph, including meaningful sanctions and penalties, to enable school administrators to hold public school students and persons responsible for a student's school attendance accountable for failing to exercise reasonable and proper care for and control over any public school book or other instructional materials, supplies, and equipment.

(c) The board shall adopt lists of basic textbooks and shall adopt one or more lists thereof. It may authorize and approve revised editions of any school book it adopts.

(2) The board may authorize the Louisiana School of Math, Science and the Arts and other parish or city school boards with programs for gifted students to select and purchase textbooks not included on the lists adopted by the board pursuant to the provisions of this Section, provided that such authorization shall be on an ad hoc basis and shall be subject to prior approval by the board. Such purchases may be made using funds appropriated by the legislature for the purchase of textbooks as provided for herein.

B. The board shall prescribe and adopt and shall exercise supervision and control over the distribution and use of school books and other learning materials, supplies, and equipment for post secondary and vocational-technical schools and programs.

C. Each contract with a publisher for school books shall be awarded on a competitive basis. Each such contract shall be made without determinate date of expiration and shall be so made as to run without change until properly terminated. Each contract shall be so made as to authorize either party to terminate it upon ninety days notice. The mode of procedure for the announcement of bids, examining books, and awarding contracts shall be under the control of the board and in accordance with any applicable law.

D. Each contract shall stipulate that the publisher shall automatically reduce the net cost of textbooks in the state when the net cost of the publisher for books covered by the contract are reduced anywhere in the United States, so that no edition of that textbook shall at any time be sold in this state at a higher net cost than that received for that book elsewhere in the United States.

E. Each contract with a publisher shall stipulate that the book or books covered by the contract to be sold in this state shall be identical with the official samples filed with the board with respect to size, paper, binding, print, illustrations, subject matter, and all other particulars which may affect the value of said books. However, during the period of the contract, the board may approve revised editions of an adopted textbook or service at the bid price, which will authorize a publisher to provide such revisions.

F. Each contract with a publisher shall stipulate that whenever five thousand or more copies of a textbook of a single title and edition are to be purchased by the state from a single publishers during a twelve month period which shall be established by the board by rule, not less than eighty percent of the total number of the copies of such book purchased by the state shall be printed and bound by a printer licensed to do business and doing business within the state, provided that the publisher receives a timely bid made according to the publisher's bid-making requirements from such a printer and provided that the printer is able to print and bind such book in accordance with the manufacturer's specifications for state textbooks as promulgated by the state Department of Education and at a cost equal to or less than the unit cost per book for the same number of books made in a otherwise qualified bid by any out-of-state printer bidding on the same work. Whenever two or more printers in this state submit bids which would qualify all of them to print and bind textbooks pursuant to this Section and one such printer is a minority-owned business as defined in R.S. 39:1952(13), the minority-owned business shall be awarded not less than ten percent of the printing and binding required by this Section to be done in this state.

G. The state Department of Education shall be the depository in the state for books for the schools. The superintendent may do all things necessary and proper for the department to function as such depository, including but not limited to the power to enter into contracts or agreements and to acquire property, through lease or purchase, in which the depository is to be located, and to determine the location or locations of the depository. The superintendent may require publishers to maintain a depository in the

state or may contract, in accordance with the procedures for the letting of contracts set forth in Part II of Chapter 10 of title 38 of the Louisiana Revised Statutes, with any other public or private agency to act as the depository.

H. The state Department of Education shall require any depository with whom the department does business to provide the department a written summary of all purchase orders for textbooks received by the depository from the department. The depository shall transmit such summary within three business days whenever the department requests it to do so and the department shall make such a request upon the written request of any printer licensed to and actually doing business in Louisiana. Such a summary shall be a public record. The summary shall itemize the total number of copies each book which is the subject of a purchase order, the unit price of each book, the commissions paid to or the discounts received by the depository, and the publishers of each book.

I. The books shall be distributed to the several parish and city school boards from the depository on requisition of the superintendent of education for public elementary and secondary education.

J. (1) The board shall establish a procedure enabling any governing authority of a public elementary or secondary school, effective January 1, 1998, and thereafter, to order and receive textbooks approved by the board directly from textbook publishers. The procedure shall include but not be limited to permitting a public elementary or secondary school governing authority to contract with a textbook publisher and receive any applicable publisher's discount. However, any textbook purchased under the provision of this Paragraph shall be purchased at the same or lower price than such textbook can be purchased from any source other than the publisher.

(2) The board shall adopt necessary rules and regulations in accordance with the Administrative Procedure Act to implement the provision of the Subsection.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2107. Sale Of Textbooks No Longer In Use [R.S. 17:8]

A parish or city school board with the prior approval of the State Board of Elementary and Secondary Education, may sell any textbook or library book no longer in use in the school system to any person or entity for private use at a fee established by the parish or city school board. Funds derived from such sale shall be used by the parish or city school board solely for textbook or library book purchases.

If a textbook or library book has been out of use for over a year a parish or city school board may, with the approval of the [State] board, donate said book to any public hospital, any jail or prison, or any public institution, or to any individual for private use free of charge.

Any textbook or library book which a parish or city school board is unable to sell or donate after being out of use in excess of eighteen months, or any textbook or library book which is deemed by said board to be unusable or unsalable shall be disposed of in an appropriate manner. The reproduction of any textbook or library book no longer in use by a parish or city school system and the use of multiple copies of such books by organized groups or by an educational agency or entity is prohibited.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2109. Operation Of Public Elementary And Secondary Schools In Accordance with State Law or Policy: Penalties For Violation [R.S. 17:172]

No free school books or other school supplies shall be furnished nor shall any state funds for the operation of school lunch programs, or any other school funds be furnished or given to any elementary or secondary school which violates the provision of this Section.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2111. Free School Books and other Materials of Instruction [R.S. 17:351]

A.(1) The State Board of Elementary and Secondary Education shall prescribe and adopt school books and other materials of instruction, which it shall supply without charge to the children of this state at the elementary and secondary levels out of funds appropriated therefore by the legislature in accordance with the requirements of Article VIII, Section 13(A) of the Constitution of Louisiana.

(2) The State Board of Elementary and Secondary Education shall prescribe and adopt those school books and other materials of instruction which accurately reflect the contributions and achievements of people of differing races.

(3) The State Board of Elementary and Secondary Education shall prescribe and adopt those school books and other materials of instruction which promotes an understanding of the history and values of the people of the United States and Louisiana, including the free enterprise system, private property, constitutional liberties values, and traditional standards of moral values.

B. The board also shall prescribe and supply school books and other materials of instruction for use by students attending vocational-technical schools and program under the jurisdiction of the board.

C.(1) The board shall establish rules and procedures for supplying schoolbooks and other materials of instruction approved by the State Board of Elementary and Secondary Education as required by this Section for children participating in any home study program approved by the board when available. Such rules and procedures shall include but not be limited to a requirement that any school books and other materials of instruction provided pursuant to this Subsection shall be made available only to the child or children of the parent or legal guardian obtaining approval for a home study program.

(2) The board shall provide a copy of such rules and procedures to any parent or legal guardian applying for approval of a home study program.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2113. Books, Films, Other School Materials; Screening Required [R.S. 17:352]

A. (1)The State Board of Elementary and Secondary Education, the State Department of Education or either of these shall take such action as is necessary to assure that all school books, films and booklets related thereto, other similar audio-visual devices, and any other similar materials of instruction are thoroughly screened, reviewed and approved as to their content by the State Board of Elementary and Secondary Education and the local parish or city school board concerned.

(2) The State Board of Elementary and Secondary Education or the State Department of Education shall take such action as is necessary to assure that any state committee or other group responsible for screening, reviewing, and evaluating any materials of instruction and computer and related technological equipment and supplies, including but not limited to any group created pursuant to the provision of R.S. 17:415.1, shall contain a membership not less than one-third of which are teachers as defined in R.S. 17:415.1.

B. The State Board of Elementary and Secondary Education shall maintain a copy of all approved textbooks and teaching materials. Such textbooks and teaching materials shall be maintained in the Department of Education for a period of one year following their initial approval and thereafter shall be maintained in the department's book depository during the time they are approved for use in Louisiana's public schools. Such textbooks are teaching materials shall be available for public inspection during regular office hours.

C. The State Board of Elementary and Secondary Education shall adopt rules and regulations to carry out the provisions of this Section.

D. Whoever intentionally violates any provision of this Section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed five hundred dollars or by imprisonment for not to exceed six months, or both.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2115. Costs Of Administration; Textbooks and Instructional Material Distribution to Nonpublic School Students [R.S. 17:353]

A. Beginning with the 1993-1994 school year, each city and parish school board which disburses school library books, textbooks, and other materials of instruction to nonpublic school students shall submit to the superintendent of education such documentation as he may require to verify the administrative costs incurred by the school board in the disbursement of such books and instructional materials.

B. The verified costs of administration incurred by each city and parish school board shall be paid by the state.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2117. Required Reports and Records; Cost Reimbursement to Approved Nonpublic Schools (Reimbursement Of Required Costs) [R.S. 17:361]

The superintendent of education, in accordance with rules and regulations adopted by the Board of Elementary and Secondary Education, shall annually reimburse each approved nonpublic school, for each school year beginning on and after July, 1979, an amount equal to the actual cost incurred by each such school during the preceding school year for providing school services, maintaining records and completing and filing reports required by law, regulation or requirement of a state department, state agency, or local school board to be rendered to the state, including but not limited to any forms, reports or records relative to school approval or evaluation, public attendance, pupil health and pupil health testing, transportation of pupils, federally-funded educational programs including school lunch and breakfast programs, school textbooks and supplies, library books, pupil appraisal, pupil progress, transfer of pupils, teacher certification, teacher continuing education programs, unemployment, annual school data, and any other education-related data which are not or hereafter shall be required of such nonpublic school by law, regulation or requirement of a state department, state agency, or local school board.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2119. Applications For Reimbursement [R.S. 17:362]

Each school which seeks reimbursement pursuant to this Part shall submit to the superintendent an application therefore, together with such additional reports and documents as the superintendent may require, at such times, in such form, and containing such information as the superintendent may prescribe in order to carry out the purposes of this Part.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2121. Maintenance Of Records [R.S. 17:363]

Each school which seeks reimbursement pursuant to this Part shall maintain a separate account or system of accounts for the expenses incurred in rendering the required services for which reimbursement is authorized by R.S. 17:361. Such records and accounts shall contain such information and be maintained in accordance with regulations adopted by the board, but for expenditures made in the school year 1979-1980, the application for reimbursement made in 1980, pursuant to R.S. 17:361 shall be supported by such reports and documents as the

superintendent shall require. In promulgating such regulations concerning records and accounts and in requiring supportive documents with respect to expenditures incurred in the school year 1979-1980, the superintendent shall implement the audit procedures provided in R.S. 17:365. The records and accounts supporting reimbursement for each school year shall be preserved at the school until the completion of such audit procedures.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2123. Payment [R.S. 17:364]

No payment to a school shall be made pursuant to this Part until the superintendent has approved the application submitted pursuant to R.S. 17:362.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2125. Audit [R.S. 17:365]

No application for reimbursement under this Part shall be approved except upon such audit of vouchers or other documents by the superintendent as is necessary to insure that such payment is lawful and proper.

The legislative auditor may from time to time examine, in accordance with the provision of R.S. 24:513, any and all accounts and records of a school which have been maintained pursuant to this Part in support of an application for reimbursement for the purpose of determining the cost to such school of rendering the services referred to in R.S. 17:361. If after such audit it is determined that any school has received funds in excess of the actual cost of providing such services, such school shall immediately reimburse the state in such excess amount.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2127. Materials; Adoption Procedures [R.S. 17:415.1]

A. Any interested citizen may request that his name be included on the mailing list for textbook adoption information by writing to the Director of the Bureau of Materials of Instruction and Textbooks. State Department of Education, Capitol Station, Baton Rouge, Louisiana. Any person who has made this request shall be timely notified of the name and address of each member of all textbook adoption committees and the Textbook and Media Advisory Council, the times, places, and agenda of all committee and council meetings, and the titles, authors, and publishers of all textbooks proposed for adoption.

B. (1) All textbook adoption committees appointed by the superintendents of elementary and secondary education shall contain a membership not less than one-third of which are teachers, not less than one-third of which are parents who are not public educators, and the remainder of which are other persons. All meetings of textbook adoption committees and the Textbook and Media Advisory Council shall be open to the public. Any member of the public may attend and file written or make oral objections to any textbook under consideration. The State Board of Elementary and Secondary Education shall adopt a form whereby any member of the public may file written objections to any textbook being considered for adoption.

(2) For purposes of this Subsection, the term "teacher" shall mean any persons employed by a city or parish school board who, as a condition of employment, is required to hold a valid teaching certificate issued by the Department of Education.

C. During the period commencing on September 1 and ending December 31 of each year, all textbooks being considered for adoption shall be placed by the Department of Education in a cooperating public library in New Orleans, Baton Rouge, Shreveport, Monroe, Alexandria, Lake Charles, Lafayette, Houma, and any other city designated by the superintendent of elementary and secondary education. Any interested person may inspect and review the books during the period when they are on display.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2129. SCR 15 of 1997, Regular Session

The Legislature of Louisiana urges and requests the State Board of Elementary and Secondary Education to coordinate a statewide system of providing braille books to visually impaired students by tracking the braille books already available and providing funding for those books which are needed.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2131. SCR 149 of 1997, Regular Session

The Legislature of Louisiana hereby urges and requests that information technology programs and activities of the state which are supported in whole or in part by public funds incorporate aspects which facilitate access to and use of such technology by the blind and visually impaired. In addition, the Louisiana Data Base Commission and other state entities involved in the development of information technology adopt guidelines which shall ensure the following, to the extent feasible,

(1) That information technology, equipment, or software used by employees or program participants who are blind or visually impaired can present information for effective, interactive control and use by both visual and non-visual means; is compatible with equipment and software used by other individual with whom the blind or visually impaired must interact; and can be integrated into the network or networks used to share communications among employees or program participants.

(2) That information technology used in the dissemination of services to the public provides blind or visually impaired individuals with access, including interactive use of equipment and services, which is equivalent to that provided to individuals who are not blind or visually impaired; and that such information technology is designed to present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use.

(3) That the procurement of information technology, whether through contract or agreement, shall be accomplished so as to provide equivalent access for effective use by both visual and non-visual use; and can be integrated into networks for obtaining, retrieving, and disseminating information used by individual who are not blind or visually impaired.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

§2133. Books for School; Special Plates [R.S. 47:463.46]

A. The Secretary of the Department of Public Safety and Corrections shall establish a prestige license plate for motor vehicles, restricted to passenger cars, pickup trucks, and vans for the purpose of promoting support for elementary and secondary education. The Secretary shall determine the design of the special prestige license plate issues under the provisions of this Section, provided such design shall bear the words "Helping Schools" and include a logo which is a symbol for reading programs in education.

B. The prestige plate shall be issued upon application to any citizen of Louisiana in the same manner as any other motor vehicle license plate.

C. The charge for this special license plate shall be \$25.00 annually in addition to the regular fee charged under the provisions of R.S. 47:463.

D. The revenue from the additional \$25.00 fee imposed by Subsection C of this Section, shall be deposited immediately upon receipt into the state treasury. After compliance with the requirements of Article 7, Section 9(B) of the Constitution of Louisiana relative to the Bond, Security and Redemption Fund, and prior to monies being placed in the state general fund, an amount equal to that deposited shall be credited to the State Board of Elementary and Secondary Education and shall be used solely

for the purchase of textbooks to be used in approved elementary and secondary schools of the State. The monies in this fund shall be invested by the state treasurer in the same manner as monies in the state general fund.

E. The superintendent of the Department of Education shall promulgate rules and regulations as necessary to implement the provisions of this Subsection relative to the purchase and distribution of textbooks.

F. The secretary shall promulgate rules and regulations to implement the provisions of Subsections A, B, C and D of this Section.

AUTHORITY NOTE: Promulgated in accordance with Article VIII, Section 13(A) of 1984; R.S. 17:7(4); 8-8.1; 172; 236; 351-353; 361-365; 415.1; 463.46.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Interested persons may submit written comments until 4:30 p.m., June 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 1794—State Textbook Adoption
Policy and Procedure Manual**

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

Prior to this rule, many districts have continued to use the 1990 state average textbook expenditure of \$27.02 per pupil as a basis for textbook acquisitions. Newly developed standards and guidelines are expected to result in a greater proportion of a local district's state allocation, through the Minimum Foundation Program (MFP), being dedicated for textbook acquisitions. In addition, a shift in workload for local school systems is expected as a result of requirements to learn new policy requirements, develop more thorough and useful plans of implementation, adopt the latest information via basal textbooks in core subject areas (science, math, language arts and social studies) and requirements to develop and maintain an ongoing textbook inventory system. Implementation of proposed changes to the LEA are expected to be cost neutral.

The cost of this implementation to state governmental units will be limited to the cost of reproducing this document for dissemination with minimal impact on operational costs to run the textbook program under new guidelines. This fifty page document has an estimated cost for copying and postage of \$2,000. This document will also be made available electronically, via the Internet, allowing districts to download or view it on the Department of Education website, thus reducing recurring costs of reproduction. Operational costs that incorporate new procedures are estimated to increase \$2,400 which covers additional workshops and materials needed to carry out new procedures.

BESE's estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$200. Funds are available.

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

Estimated effects on state revenue collections (self-generated funds) are expected to result from annual participation fees assessed publishers participating in the textbook adoption process (e.g., 24 publishers X \$100 = \$2,400. Local revenue collections may increase as a result of local authority to assess

publishers a 1% fine on outstanding balances of late textbook deliveries. However, no prior data exists to support a baseline estimate.

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

Teachers and students will benefit directly from having access to the latest instructional materials/information and will benefit indirectly from methods that improve selection, acquisition and distribution of such materials. School districts will benefit directly from improved communications via reporting requirements that will also help decision making at the local level. New standards and guidelines stipulate that textbooks must be adopted in core subject areas within a three year period. Therefore, more books ordered by the LEA will increase profits for publishers with state-adopted instructional materials in core subject areas. Each publisher will be assessed a participation fee of \$100 at the state level and face fines imposed at the local level of 1% of the outstanding balance for late textbook deliveries. No prior data exists to support estimated costs for late deliveries.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No estimated effect on competition and employment is expected as a result of the proposed rule.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
9904#070

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 2000—Educational Framework for Louisiana's Agriscience/Agribusiness/FFA Program (LAC 28:I.930)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education approved for advertisement, Educational Framework for Louisiana's Agriscience/Agribusiness/FFA Program, Bulletin 2000. The Educational Framework for Louisiana's Agriscience/Agribusiness/FFA Program will be referenced in the Louisiana Administrative Code as follows:

Title 28

EDUCATION

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§930. State Content Standards**

A. - G. ...

H. Bulletin 2000—Agriscience/Agribusiness Content Standards

1. Bulletin 2000—Standards for Agriscience/Agribusiness/FFA Program in Louisiana Schools is adopted.

2. This bulletin contains standards and benchmarks which will be used by Local Agencies (LEAs) as a guide for developing curriculum at the local level. These standards and benchmarks define what Louisiana students should know and be able to do.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.
HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 25:

Bulletin 2000, Educational Framework for Louisiana Agriscience/Agribusiness/FFA Program will be published and disseminated to all local education agencies and regional services centers. A complete text of the standards may be viewed in the Office of the State Register, 1051 North Third Street, Baton Rouge; the Office of the State Board of Elementary and Secondary Education; or the Office of Standards and Assessment, State Department of Education.

Interested persons may submit comments until 4:30 p.m., June 10, 1999 to Jeannie Stokes, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Bulletin 2000—Educational Framework for
Louisiana's Agriscience/Agribusiness/FFA Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The primary cost to implement the Agriscience/Agribusiness/FFA Frameworks is for printing and disseminating the standards to all programs and other interested parties. The estimated cost of printing is \$4.00 x 500 copies for a total of \$2000.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections for state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs and/or economic benefits that directly affect any person or nongovernmental groups other than the indirect effects of improved student preparation for the workforce.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The Agriscience Framework implementation will not affect competition. However, students should gain improved employment readiness and skills, which will enhance Louisiana businesses.

Marlyn Langley
Deputy Superintendent
9904#065

H. Gordon Monk
Staff Director
Management and Finance

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Tuition Opportunity Program for Students
(TOPS)—Scholarship and Grant Programs
(LAC 28:IV.301)

The Louisiana Student Financial Assistance Commission (LASFAC) advertises its intention to revise the provisions of the Tuition Opportunity Program for Students (TOPS).

The full text of these proposed rules may be viewed in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., May 20, 1999, to Jack L. Guinn, Executive Director, Office of the Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Tuition Opportunity Program for Students
(TOPS)—Higher Education Scholarship and Grant Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The implementation cost associated with publishing these rule revisions in the *Louisiana Register* as emergency, notice and rule is approximately \$100. Costs for Funding for TOPS-Teacher awards will not increase as a result of this rule change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections is anticipated to result from this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
TOPS-Teacher applicants will have their years in college accorded more weight in their ranking as a result of this rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated to result from this rule.

Jack L. Guinn
Executive Director
9904#006

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Organic Solvents (LAC 33:III.2123)(AQ189)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air Quality Division regulations, LAC 33:III.2123 (Log Number AQ189).

This proposed rule will clarify the wording of LAC 33:III.2123.B.1. LAC 33:III.2123.D.6 provides exemptions on emissions of VOCs for surface coating facilities in attainment and nonattainment areas of Louisiana and refers to LAC 33:III.2123.C.1-10 to determine emission limitations. This citation is corrected to include Paragraph 11, also. The basis and rationale for this proposed rule are to make a grammatical clarification and correct a reference oversight.

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

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter B. Organic Solvents

§2123. Organic Solvents

* * *

[See Prior Text in A-B]

1. For the purposes of this Subsection, a photochemically reactive solvent is any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified below or which exceeds any of the following individual percentage composition limitations, referred to the total volume of solvent:

* * *

[See Prior Text in B.1.a-D.5]

6. Surface coating facilities on any property in Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge parishes which when controlled have a potential to emit at maximum production a combined weight (total from the property) of volatile organic compounds less than 10 tons in any consecutive 12 calendar months are exempt from the provisions of Subsection C.1-11 of this Section. Surface coating facilities on any property in parishes other than Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge which when uncontrolled have a potential to emit a combined weight of volatile organic compounds less than 100 pounds (45 kilograms) in any consecutive 24-hour period are exempt from the provisions of Subsection C.1-11 of this Section.

* * *

[See Prior Text in D.7-G]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 16:119 (February 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 22:340 (May 1996), LR 22:1212 (December 1996), LR 23:1678 (December 1997), LR 24:23 (January 1998), LR 24:1285 (July 1998), LR 25:

A public hearing will be held on May 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by AQ189. Such comments must be received no later than June 1, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of AQ189.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

Gus Von Bodungen, P.E.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Organic Solvents

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units as a result of this proposal.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units as a result of this proposal.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This rule revision includes an exemption that was inadvertently left out in a prior rule revision. Affected facilities include surface coating for marine vessels and oilfield tubular and ancillary oilfield equipment. This oversight was brought to our attention by an affected facility.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposal will have no effect on competition or employment.

Gus Von Bodungen
Asst. Secretary
9904#034

John R. Rombach
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Environmental Quality
Office of Water Resources
Water Pollution Control Division**

**Procedures for Modifying Approved
POTW Pretreatment Programs
(LAC 33:IX.2715, 2721 and 2735)(WP031*)**

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2715, 2721, and 2735 (WP031*).

This proposed rule is identical to a federal regulation found in 62 FR 38405-38415, Number 137, July 17, 1997, which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed rule corrects typographical errors and omissions made in WP030*, which was a final rule in November 1998. These changes will equate Louisiana regulations for streamlined procedures for modifying approved pretreatment programs to the EPA federal regulations. The basis and rationale for this proposed rule are to mirror the federal regulations.

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

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality Regulations

Chapter 23. The Louisiana Pollutant Discharge

Elimination System (LPDES) Program

Subchapter T. General Pretreatment Regulations for

Existing and New Sources of Pollution

§2715. Pretreatment Program Requirements:

Development and Implementation by POTW

* * *

[See Prior Text in A - F.5.d]

6. The POTW shall prepare and maintain a list of its industrial users meeting the criteria in LAC 33:IX.2705.*Significant Industrial User*. Subparagraph a. The list shall identify the criteria in LAC

33:IX.2705.*Significant Industrial User*, Subparagraph a applicable to each industrial user and, for industrial users meeting the criteria in LAC 33:IX.2705.*Significant Industrial User*.a.ii shall also indicate whether the POTW has made a determination in accordance with LAC 33:IX.2705.*Significant Industrial User*. Subparagraph b that such industrial user should not be considered a significant industrial user. The initial list shall be submitted to the approval authority in accordance with LAC 33:IX.2717 as a nonsubstantial program modification in accordance with LAC 33:IX.2735.D. Modifications to the list shall be submitted to the approval authority in accordance with LAC 33:IX.2723.I.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 24:2122 (November 1998), LR 25:

§2721. Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits

The following procedures shall be adopted in approving or denying requests for approval of POTW Pretreatment Programs and applications for removal credit authorization.

* * *

[See Prior Text in A - B.1.a]

i. mailing notices of the request for approval of the submission to designated 208 planning agencies, federal and state fish, shellfish, and wildlife resource agencies (unless such agencies have asked not to be sent the notices); and to any other person or group who has requested individual notice, including those on appropriate mailing lists; and

ii. publication of a notice of request for approval of the submission in a newspaper(s) of general circulation within the jurisdiction(s) served by the POTW that provides meaningful public notice.

* * *

[See Prior Text in B.1.b - F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 25:

§2735. Modification of POTW Pretreatment Programs

* * *

[See Prior Text in A - B.1]

a. modifications that relax POTW legal authorities (as described in LAC 33:IX.2715.F.1), except for modifications that directly reflect revision to the general pretreatment regulations, LAC 33:IX.Chapter 23.Subchapter T or Subchapter N, and reported in accordance with Subsection D of this Section;

b. modifications that relax local limits, except for the modifications to local limits for pH and reallocations of the Maximum Allowable Industrial Loading of a pollutant that do not increase the total industrial loadings for the pollutant, which are reported in accordance with Subsection D of this Section. Maximum Allowable Industrial Loadings mean the total mass of a pollutant that all industrial users of a POTW (or a subgroup of industrial users identified by the POTW) may discharge in accordance with limits developed under LAC 33:IX.2709.C;

* * *

[See Prior Text in B.1.c - B.1.g]

C. Approval Procedures for Substantial Modifications

* * *

[See Prior Text in C.1 - C.2]

3. The approval authority need not publish a notice of decision under LAC 33:IX.2721.E, provided the notice of request for approval under LAC 33:IX.2721.B.1 states that the request will be approved if no comments are received by a date specified in the notice, no substantial comments are received, and the request is approved without change.

* * *

[See Prior Text in C.4 - D.3]

E. Incorporation in the Permit. All modifications shall be incorporated into the POTW's LPDES permit upon approval. The permit will be modified to incorporate the approved modification in accordance with LAC 33:IX.2385.A.7.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 24:2122 (November 1998), LR 25:

A public hearing will be held on May 25, 1999, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by WP031*. Such comments must be received no later than May 25, 1999, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (225) 765-0486. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of WP031*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/olaie/irdd/olaeregs.htm>.

Linda Korn Levy
Assistant Secretary

9904#047

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Veterinary Medicine**

Expired Drugs (LAC 46:LXXXV.705)

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.705 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, La. R.S. 37:1518 et seq. No preamble has been prepared.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXXV. Veterinarians

Chapter 7. Veterinary Practice

§705. Prescribing and Dispensing Drugs

A. - G. ...

H. It shall be a violation of the rules of professional conduct under R.S. 37:1526(14) for a veterinarian in the course of his veterinary practice to use or dispense any products, including drugs, which are expired.

I. It shall be a violation of the rules of professional conduct under R.S. 37:1526(14) for a veterinarian to be in possession of drugs or other medical products which are over six months past their expiration date unless the materials are obviously removed from use and it can be documented that said drugs are in the process of being returned or otherwise disposed of.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 6:71 (February 1980), amended LR 16:226 (March 1990), LR 19:1329 (October 1993), LR 20:1381 (December 1994), LR 23:1686 (December 1997), LR 24:1932 (October 1998), LR 25:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on May 27, 1999. 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 May 27, 1999, at 9:00 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801.

Charles B. Mann
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Expired Drugs**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated \$120). The veterinary profession will be informed of this rule change via the board's regular newsletter or other direct mailings, which are already a budgeted cost of 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. There will be no revenue impact 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)
There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated effect on employment and competition.

Charles B. Mann
Executive Director
9904#020

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Veterinary Medicine**

**Partnerships, Corporations, and Limited Liability
Companies (LAC 46:LXXXV.1015)**

The Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.1015 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Veterinary Practice Act, La. R.S. 37:1518 et seq. No preamble has been prepared.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXXV. Veterinarians

Chapter 10. Rules of Professional Conduct

**§1015. Partnerships, Corporations, and Limited
Liability Companies**

In the formation of partnerships, corporations, or limited liability companies for the practice of veterinary medicine, no person shall be admitted as a partner or owner who is not a member of the veterinary profession, duly licensed to practice in this state, and amenable to professional discipline. No person shall be held out as a practitioner of veterinary medicine or a member of the firm who is not so admitted. In

the selection and use of a firm name, no false or misleading name shall be used. Partnerships between veterinarians and members of other professions or nonprofessional persons shall not be formed or permitted if a part of the partnership employment consists of the practice of veterinary medicine. Corporations or limited liability companies created or owned by licensed veterinarians in conjunction with non-veterinarians shall not be permitted if a part of the company's function consists of the practice of veterinary medicine

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:229 (March 1990), amended LR 25:

Interested parties may submit written comments to Charles B. Mann, Executive Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on May 27, 1999. 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 May 27, 1999, at 9:00 a.m. at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801.

Charles B. Mann
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Partnerships, Corporations, and Limited
Liability Companies**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated \$120). The veterinary profession will be informed of this rule change via the board's regular newsletter or other direct mailings, which are already a budgeted cost of 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. There will be no revenue impact 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)
There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated as a result of the proposed rule change.

Charles B. Mann
Executive Director
9904#019

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of Management and Finance

Medicare Rural Hospital Flexibility Program—Critical Access Hospitals (LAC 48:I.7601-7615)

The Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development proposes to adopt the following rule in the Medicare Rural Hospital Flexibility Program (MRHF) as authorized by the Balanced Budget Act of 1997 (Public Law 105-33) and pursuant to Title XVIII of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

This proposed rule will implement the Medicare Rural Hospital Flexibility Program (MRHF) to assist rural communities in improving access to essential health care services through the establishment of limited service hospitals and rural health networks. The Program creates the Critical Access Hospital (CAH) as a limited service hospital eligible for Medicare certification and reimbursement and supports the development of rural networks consisting of CAHs, acute care hospitals and other health care providers. This proposed rule provides for the establishment of the process for designating CAHs.

The full text of this Notice of Intent can be viewed in full in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments to Carolyn Maggio, Department of Health and Hospitals, Office of Management and Finance, Division of Research and Development, Post Office Box 2870, Baton Rouge, Louisiana 70821-2870.

A public hearing on the proposed rule will be held at 10:00 a.m., May 25, 1999 in the Education and Training Room (3rd floor) at the Department of Health and Hospitals, 1201 Capitol Access Road, Baton Rouge, LA 70802. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Critical Access Hospitals

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- Implementation costs to the Department of Health and Hospitals will be minimal since the hospitals will be certified for reasonable Medicare cost reimbursement. The initial certification cost for each facility will be approximately \$1,200; recertification will cost approximately \$800 per facility. Both certification and recertification will be 90 percent Medicare funded. The 10 percent State share of the certification (\$120 per facility) and recertification cost (\$80 per facility) would cost the State \$1,560 if thirteen hospitals participate. Thereafter, the yearly cost to certify thirteen hospitals would be approximately

\$1,040. Other management and operation costs will be minimal and shall be absorbed by existing staff and within the existing budget.

Printing of the Notice of Intent is expected to cost approximately \$320.

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

The federal Health Resources Services Administration (HRSA) will provide \$200,000 through the State Office of Rural Health grant to provide technical assistance (such as cost incurred in financial assessment, development of networks, support training of local health care professionals) in FY 99-00. Louisiana will receive \$500,000 in grant funds from HRSA for FY 00-01 and anticipate similar funding for out years.

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

The Critical Access Hospital Program will allow communities, who already have difficulty with health care access, to maintain some level of outpatient and inpatient care. This certification will allow hospitals to limit services and network with other health care facilities for other services. The hospital will save money as it will not have to meet all hospital standards regarding hours and days opened except as required for emergency and nursing staff for any inpatient in the facility and provide some services part-time. The grant will be used to reimburse some of the small rural hospitals cost in planning, implementing and meeting the requirement of the different certification.

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

There is no competition for the services that these hospitals provide in the community. If they close, no inpatient services will be available in the small rural communities. Since forming networks with other providers as well as larger acute care hospitals is a program requirement, this program is expected to result in services being delivered cost effectively in an appropriate setting.

Participation in the program will allow retention of some professional and skilled staff who would be unemployed if the facility closed.

David W. Hood
Secretary
9904#066

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Durable Medical Equipment—Peak Flow Meters

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Service Financing currently provides coverage for durable

medical equipment. All medical equipment, appliances and supplies must be prior authorized to determine medical necessity. Currently, the portable manual peak flow meter used for the treatment of asthma is not covered. However, prior authorization for this medical device may be considered for recipients under the age of 21 since Early Periodic Screening Diagnosis and Treatment (EPSDT) regulations require the provision of any medically necessary service for recipients under the age of 21. Inclusion of the portable manual peak flow meter in the list of covered services will ensure availability to recipients of all ages, subject to medical necessity review and prior authorization by the Prior Authorization unit. Therefore, the Bureau proposes to extend Medicaid coverage under the Durable Medical Equipment Program to include portable manual peak flow meters used for the treatment of asthma.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing expands coverage under the Durable Medical Equipment Program to include the portable manual peak flow meter used for the treatment of asthma. Portable manual peak flow meters shall be subject to prior authorization when prescribed by a physician for the measurement of lung function as part of an effective asthma management program.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 28, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Durable Medical Equipment—Peak Flow
Meters**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this proposed rule will increase expenditures in the Durable Medical Equipment Program by approximately \$6,267 for SFY 1999-2000, \$6,406 for SFY 2000-2001, and \$6,588 for SFY 2001-2002. Included in SFY 1999-2000 is \$40 for the state's administrative expense of promulgating this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated effect on revenue collections is approximately \$14,773 for SFY 1999-2000, \$15,183 for SFY 2000-2001, and \$15,648 for SFY 2001-2002. Included in SFY 1999-2000 is

\$40 for the federal share of promulgating this proposed rule and the final rule.

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

Medicaid recipient with asthma will benefit from having access to portable manual peak flow meter for home treatment. The providers who supply these devices will be able to receive reimbursement. Implementation of this proposed rule will result in an increase in payments to providers in the Durable Medical Equipment Program by approximately \$21,040 for SFY 1999-2000, \$21,589 for SFY 2000-2001, and \$22,236 for SFY 2001-2002.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9904#050

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Medicaid—Mucus Clearance (Flutter) Device

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Service Financing currently provides coverage for durable medical equipment. All medical equipment, appliances and supplies must be prior authorized to determine medical necessity. Currently, the mucus clearance (flutter) device, used to facilitate the removal of mucus from the lungs for conditions such as Chronic Obstructive Pulmonary Disease and Cystic Fibrosis, is not covered under the Durable Medical Equipment Program. However, prior authorization for this medical device may be considered for recipients under the age of 21 since Early Periodic Screening Diagnosis and Treatment (EPSDT) regulations require the provision of any medically necessary service for recipients under the age of 21. Inclusion of this mucus clearance (flutter) device in the list of covered services will ensure availability to recipients of all ages, subject to medical necessity review and prior authorization by the Prior Authorization unit. Therefore, the Bureau proposes to expand Medicaid coverage under the Durable Medical Equipment Program to include mucus clearance (flutter) devices for the treatment of lung diseases or conditions producing retained secretions.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing expands Medicaid coverage under the Durable Medical Equipment Program to include mucus clearance (flutter) devices used in

the treatment of lung diseases or conditions producing retained secretions. Small hand held mucus clearance (flutter) devices shall be subject to prior authorization when prescribed by a physician for recipients with lung diseases or conditions producing retained secretions.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 28, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

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

RULE TITLE: Medicaid—Mucus Clearance Flutter Device

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this proposed rule will increase expenditures in the Durable Medical Equipment Program by approximately \$6,018 for SFY 1999-2000, \$6,149 for SFY 2000-2001, and \$6,325 for SFY 2001-2002. Included in SFY 1999-2000 is \$40 for the state's administrative expense of promulgating this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated effect on revenue collections is approximately \$14,183 for SFY 1999-2000, \$14,576 for SFY 2,000-2001, and \$15,021 for SFY 2001-2002. Included in SFY 1999-2000 is \$40 for the federal share of promulgating this proposed rule and the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Medicaid recipients with lung diseases will benefit from having access to mucus clearance (flutter) devices. The providers who supply these devices will be able to receive reimbursement. Implementation of this proposed rule will result in an increase in payments to providers in the Durable Medical Equipment Program by approximately \$20,201 for SFY 1999-2000, \$20,725 for SFY 2000-2001, and \$21,346 for SFY 2001-2002.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no known effect on competition and employment.

Thomas D. Collins
Director
9904#029

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Relocation of Hospital Service District Beds
(LAC 48:I.12501)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by R.S. 40:2116 and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act.

In some parishes there may be areas far away from existing nursing facility beds that participate in Medicaid. The prospects for developing additional Medicaid participating nursing facility beds in these areas are limited by the moratorium on new approvals of additional Medicaid nursing facility beds imposed by La. R.S. 40:2116, and by the current rules providing for facility need review, which prohibit relocation of a portion of a nursing facility's approved beds without the surrender of those approved beds not relocated.

The department proposes changes in the rules which provide for facility need review (LAC 48:I.12501 through 12505) published on August 20, 1995 (*Louisiana Register*, Volume 21, Number 8), in order to allow a hospital service district to relocate a portion of the Medicaid beds in an existing nursing facility it owns to another location within the service area, and within the boundaries of the hospital service district. This relocation should make these beds more accessible to some individuals who live within the service area, but far away from existing Medicaid beds.

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing amends §12501 entitled Introduction as follows:

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

§12501. Introduction

A. ...

B. Definitions. When used in this rule the following terms and phrases shall have the following meanings unless the context requires otherwise:

* * *

Hospital Service District—a political subdivision of the State of Louisiana created or authorized pursuant to R.S. 46:1051 et seq.

* * *

F.1. - 7. ...

8. A nursing facility's approved beds may be relocated only under the following conditions.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Relocation of Hospital Service District Beds**

a. The approved beds cannot be relocated to a different service area.

b. Subject to the exception provided in Subparagraph c, all of the approved beds must be relocated to a single new location, and the approval of any beds not relocated to that new location shall be revoked.

c. Notwithstanding the requirements of Subparagraph b, a partial relocation of approved beds may be effected if the following conditions are met:

i. the approved beds are in a nursing facility owned by a hospital service district as of the date of adoption of this Rule and at the time of the partial relocation;

ii. the partial relocation meets the requirements of subparagraph a;

iii. the approved beds are relocated to the site of a currently operational hospital owned by the same or a different hospital service district. If the new location is owned by a different hospital service district, the ownership of the approval of the relocated beds must be transferred to the hospital service district to which the beds are relocated;

iv. no more than 25% of the nursing facility's approved beds are relocated.

d. If, within five years after a partial relocation to a hospital site pursuant to Subparagraph c, the hospital located at that site ceases operations, the relocated beds shall revert to the original facility from which they were relocated. This provision shall not apply to relocations which require a transfer of ownership of the approval of the relocated beds.

e. A hospital service district may relocate or transfer the ownership of the approval of approved beds pursuant to Subparagraph c only once.

f. Subparagraphs c, d, and e are not intended to prohibit or restrict the relocation of all of the approved beds in a nursing facility by a hospital service district in accordance with Subparagraphs a and b.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:806 (August 1995), amended LR 25:

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to inquiries regarding the proposed rule.

A public hearing will be held on this matter on Friday, May 28, 1999 at 9:30 am in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

David W. Hood
Secretary

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

The cost for promulgation of the proposed rule is estimated to be \$260.00. The only other estimated costs involved would be construction or renovation costs that might be incurred if a hospital service district were to construct a new facility or renovate an existing health care facility to accommodate relocated nursing facility beds.

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

Implementation of this rule will have no known effect upon revenue collections of either State or Local governmental units.

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

There may be economic benefits that result from the building of a new facility. The other economic benefit to directly affected persons or nongovernmental groups would be the reduction in travel cost for family members/others who visit residents in relocated nursing facility beds.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There may be an increase in short term employment if one or more of the nursing homes owned or operated by hospital service districts builds a new nursing home within which to house relocated beds. Long term employment changes will consist primarily of only a shift within the service area as staff members relocate from the presently operated facility to the facility to contain relocated beds.

Thomas D. Collins
Director
9904#052

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Surveillance and Utilization Review Systems (SURS)
(LAC 50:II.Chapter 41)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by LA. R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing previously published regulations regarding prepayment and post-payment review of claims submitted to the Department and or its Fiscal Intermediary by providers in October 1978 and later revised these regulations in July 1980 (*Louisiana Register*, Volumes 4 and 6, Numbers 10 and 7). The Department has decided that it is necessary to revise and

expand its existing regulations regarding prepayment and post-payment review of claims made or submitted to the Department or its Fiscal Intermediary by provider(s) of goods, services, and supplies who seek or may seek payment or reimbursement from the Louisiana Medicaid Program for the providing of or claiming to provide goods, services, or supplies and administrative sanctions of providers and others who violate the laws, regulations, rules, policies or procedures governing the Louisiana Medicaid Program. Therefore, the Department proposes to adopt the following revised regulations in accordance with R.S. 49:951 et seq. and R.S. 46:437.4.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 1. General /Program Integrity

Chapter 41. Surveillance and Utilization Review Systems (SURS)

Subchapter A. General Provisions

§4101. Foreword

A. The Medical Assistance Program is a four party arrangement; the taxpayer, the government, the beneficiaries and the providers. The Secretary of the Department of Health and Hospitals, through this regulation, recognizes:

1. the obligation to the taxpayers to assure the fiscal and programmatic integrity of the Medical Assistance Program. The Secretary has zero tolerance for fraudulent, willful, abusive or other ill practices perpetrated upon the Medical Assistance Program by providers, providers-in-fact and others, including beneficiaries. Such practices will be vigorously pursued to the fullest extent allowed under the applicable laws and regulations;

2. the responsibility to assure that actions brought in pursuit of providers, providers-in-fact and others, including beneficiaries, under this regulation are not frivolous, vexatious or brought primarily for the purpose of harassment. Providers, providers-in-fact and others, including beneficiaries, must recognize that they have an obligation to obey and follow all applicable laws, regulations, policies, criteria and procedures; and

3. that when determining whether a fraudulent pattern of incorrect submissions exists under this regulation, the department has an obligation to demonstrate that the pattern of incorrect submissions are material, as defined under this regulation, prior to imposing a fine or other monetary sanction which is greater than the amount of the identified overpayment resulting from the pattern of incorrect submissions. In the case of an action brought for a pattern of incorrect submissions, providers and providers-in-fact must recognize that if they frivolously or unreasonably deny the existence or amount of an overpayment resulting from a pattern of incorrect submissions, the department may impose judicial interest on any outstanding recovery or recoupment or reasonable cost and expenses incurred as the direct result of the investigation or review, including but not limited to the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employees or agents.

B. The Department of Health and Hospitals, Bureau of Health Services Financing (BHSF) has adopted this regulation in order to:

1. establish procedures for conducting surveillance and utilization review of providers and others;

2. define conduct in which providers and other cannot be engaged;

3. establish grounds for sanctioning providers and others who engage in prohibited conduct; and

4. establish the procedures to be used when sanctioning or otherwise restricting a provider and others under the Louisiana Medicaid Program.

C. The purpose of this regulation is to assure the quality, quantity, and need for such goods, services, and supplies and to provide for the sanctioning of those who do not provide adequate goods, services, or supplies or request payment or reimbursement for goods, services, or supplies which do not comply with the requirements of federal laws, federal regulations, state laws, state regulations or the rules, procedures, criteria or policies governing providers and others under the Louisiana Medicaid Program;

D. A further purpose of this regulation is to assure the integrity of the Louisiana Medicaid Program by providing methods and procedures to:

1. prevent, detect, investigate, review, hear, refer, and report fraudulent or abusive practices, errors, over-utilization, or under-utilization by providers and others;

2. impose any and all administrative sanctions and remedial measures authorized by law or regulation, which are appropriate under the circumstances;

3. pursue recoupment or recovery arising out of prohibited conduct or overpayments;

4. allow for informal resolution of disputes between the Louisiana Medicaid Program and providers and others;

5. establish rules, policies, criteria and procedures; and

6. other functions as may be deemed appropriate.

E. In order to further the purpose of this regulation the Secretary may establish peer review groups for the purpose of advising the Secretary on any matters covered in this regulation.

F. Nothing in this regulation is intended, nor shall it be construed, to grant any person any right to participate in the Louisiana Medicaid Program which is not specifically granted by federal law or the laws of this state or to confer upon any person's rights or privileges which are not contained within this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4103. Definitions

A. The following specific terms shall apply to all those participating in the Louisiana Medicaid Program, either directly or indirectly, and shall be applied when making any and all determinations related to this and other departmental

regulations, rules, policies, criteria, and procedures applicable to the Louisiana Medicaid program and its programs.

Affiliates—any person who has a direct or indirect relationship or association with a provider such that the provider is directly or indirectly influenced or controlled by the affiliate or has the power to do so. Any person with a direct or indirect ownership interest in a provider is presumed to be an affiliate of that provider. Any person who shares in the proceeds or has the right to share in the proceeds of a provider is presumed to be an affiliate of that provider unless that person is a spouse or a minor child of the provider and has no other affiliation with the provider other than that of being a family member of the provider.

Agent—a person who is employed by or has a contractual relationship with a provider or who acts on behalf of the provider.

Agreement to Repay—a formal written and enforceable arrangement to repay an identified overpayment, interest, monetary penalties or costs and expenses.

Billing Agent—any agent who performs any or all of the provider's billing functions. Billing agents are presumed to be an agent of the provider.

Billing or Bill—submitting, or attempting to submit, a claim for goods, supplies, or services.

Claim—any request or demand, including any and all documents or information required by federal or state law or by rule made against Medical Assistance Program funds for payment. A claim may be based on costs or projected costs and includes any entry or omission in a cost report or similar document, book of account, or any other document which supports, or attempts to support, the claim. In the case of a claim based on a cost report, any entry or omission in a cost report, book of account or other documents used or intended to be used to support a cost report shall constitute a claim. Each claim may be treated as a separate claim, or several claims may be combined to form one claim.

Claims or Payment Review—the process of reviewing documents or other information or sources required or related to the payment or reimbursement to a provider by the department, BHSF, SURS or the fiscal intermediary in order to determine if the bill or claim should be or should have been paid or reimbursed. Payment and claim reviews are the same process.

Contractor—any person with whom the provider has a contract to perform a service or function on behalf of the provider. A contractor is presumed to be an agent of the provider.

Corrective Action Plan—a written plan, short of an administrative sanction, agreed to by a provider, provider-in-fact or other person with the department, BHSF or, Program Integrity designed to remedy any inefficient, aberrant or prohibited practices by a provider, provider-in-fact or other person. A corrective action plan is not a sanction.

Department—the Louisiana Department of Health and Hospitals.

Deputy Secretary—the Deputy Secretary of the department or authorized designee.

Director of Program Integrity or Assistant Director of Program Integrity—the individual whom the Secretary has

designated as the director, program manager or section chief of the Program Integrity Division or the designated assistant to the Director of Program Integrity Division respectively or their authorized designee.

Director of the Bureau of Health Finance Services—the director of BHSF or authorized designee.

Exclusion from Participation—a sanction that terminates a provider, provider-in-fact or other person from participation in the Louisiana Medicaid program, or one or more of its programs and cancels the provider's provider agreement.

a. A provider who is excluded may, at the end of the period of exclusion, reapply for enrollment.

b. A provider, provider-in-fact or other person who is excluded may not be a provider or provider-in-fact, agent of a provider, or affiliate of a provider or have a direct or indirect ownership in any provider during their period of exclusion.

False or Fraudulent—a claim which the provider or his billing agent submits knowing the claim to be false, fictitious, untrue, or misleading in regard to any material information. "False or fraudulent claim" shall include a claim which is part of a pattern of incorrect submissions in regard to material information or which is otherwise part of a pattern in violation of applicable federal or state law or rule.

Federal Regulations—the provisions contained in the Code of Federal Regulations (CFR) or the Federal Register (FR).

Finalized Sanction or Final Administrative Adjudication or Order—a final order imposed pursuant to an administrative adjudication that has been signed by the Secretary or the Secretary's authorized designee.

Fiscal Agent or Fiscal Intermediary—an organization or legal entity which whom the department contracts with to provide for the processing, review of or payment of provider bills and claims.

Good, Service or Supply—any good, item, device, supply, or service for which a claim is made, or is attempted to be made, in whole or in part.

Health Care Provider—any person furnishing or claiming to furnish a good, service, or supply under the Medical Assistance Programs as defined in R.S. 46:437.3 and any other person defined as a health care provider by federal or state law or by rule. For the purpose of this regulation health care provider and provider are interchangeable terms.

Identified Overpayment—the amount of overpayment made to or requested by a provider that has been identified in a final administrative adjudication or order.

Ineligible Recipient—an individual who is not eligible to receive health care through the medical assistance programs.

Indirect Ownership—an ownership interest in an entity that has an ownership interest in a provider. This term includes an ownership interest in any entity that has an indirect ownership interest in a provider.

Informal Hearing—an informal conference between the provider, provider-in-fact or other persons and the Director of Program Integrity or the SURS manager related to a notice of corrective action, notice of withholding of payments or notice of sanction.

Investigator or Analyst—any person authorized to conduct investigations on behalf of the department, BHSF, Program

Integrity Division, SURS or the fiscal intermediary, either through employment or contract for the purposes of payment or programmatic review.

Investigatory Process—the examination of the provider, provider-in-fact, agent-of-the-provider, or affiliate, and any other person or entity, and any and all records held by or pertaining to them pursuant to a written request from BHSF. No adjudication is made during this process.

Knew or Should Have Known—the person knew or should have known that the activity engaged in or not engaged in was prohibited conduct under this regulation or federal or state laws and regulations. The standard to be used in determining knew or should have known is that of a reasonable person engaged in the activity or practice related to the Medical Assistance Program at issue.

Knowing or Knowingly—the person has actual knowledge of the information, or acts in deliberate ignorance or reckless disregard of the truth or falsity of the information. The standard to be used in determining knowing or knowingly is that of a reasonable person engaged in the activity or practice related to the Medical Assistance Program at issue.

Law—the constitutions, statutory or code provisions of the federal government and the government of the state of Louisiana.

Louisiana Administrative Code (LAC)—the *Louisiana Administrative Code* or the *Louisiana Register*.

Managing Employee—a person who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operations of a provider. Managing employee shall include, but is not limited to, a chief executive officer, president, general manager, business manager, administrator, or director.

Medical Assistance Program or Medicaid—the Medical Assistance Program (Title XIX of the Social Security Act), commonly referred to as "Medicaid", and other programs operated by and funded in the department which provide payment to providers.

Misrepresentation—the knowing failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required on a claim or a provider agreement or the making of a false or misleading statement to the department relative to the Medical Assistance Program.

Notice—actual or constructive notice.

Notice of an Action—a written notification of an action taken or to be taken by the department, BHSF or SURS. A notice must be signed by or on behalf of the Secretary, Director of BHSF, or Director of Program Integrity.

Medical Necessity or Necessary Goods, Services or Supplies—goods, services or supplies that a prudent provider would provide to a recipient for the purpose of preventing, diagnosing or treating an illness, injury, disease, handicap, infirmity, deformity or malfunction or its symptoms in a manner that is:

(a) in accordance with generally accepted standards of medical practice or other applicable practice or profession; and

(b) is appropriate in terms of type, frequency, extent, site, duration and cost.

Ownership Interest—the possession, directly or indirectly, of equity in the capital or the stock, or right to share in the profits of a provider.

Payment or Reimbursement—the payment or reimbursement to a provider from Medical Assistance Programs' funds pursuant to a claim, or the attempt to seek payment for a claim.

Person—any natural person, company, corporation, partnership, firm, association, group, or other legal entity or as otherwise provided for by law.

Policies, Criteria or Procedure—those things established or provided for through departmental manuals, provider updates, remittance advice or bulletins issued by the Medical Assistance Program or on behalf of the Medical Assistance Program.

Program—any program authorized under the Medical Assistance Program.

Program Integrity Division (PID)—the Program Integrity Unit under BHSF within the department, its predecessor and successor.

Provider Agreement—the document(s) signed by or on behalf of the provider and those things established or provided for in R.S. 46:437.11 - 437.14 or by rule, which enrolls the provider in the Medical Assistance Program or one or more of its programs and grants to the provider a provider number and the privilege to participate in Medicaid of Louisiana or one or more of its programs.

Provider Enrollment—the process through which a person becomes enrolled in the Medical Assistance Program or one of its programs for the purpose of providing goods, services, or supplies to one or more Medicaid recipients or submissions of claims.

Provider-in-Fact—person who directly or indirectly participates in management decisions, has an ownership interest in the provider, or other persons defined as a provider-in-fact by federal or state law or by rule. A person is presumed to be a provider-in-fact if the person is:

- a. a partner;
- b. a board of Directors member;
- c. an office holder; or
- d. a person who performs a significant management or administrative function for the provider, including any person or entity who has a contract with the provider to perform one or more significant management or administrative functions on behalf of the provider;
- e. a person who signs the provider enrollment paper work on behalf of the provider;
- f. a managing employee;
- g. an agent of the provider, or a billing agent may also

be a provider-in-fact for the purpose of determining a violation and the imposing of a sanction under this regulation.

Provider Number—a provider's billing or claim reimbursement number issued by the department through BHSF under the Medical Assistance Program.

Random Statistical Sample—a statistical formula and sampling technique used to produce a statistical extrapolation of the amount of overpayment made to a provider or a volume of the violations.

Recoupment—recovery through the reduction, in whole or in part, of payments or reimbursements to a provider.

Recovery—the recovery of overpayments, damages, fines, penalties, costs, expenses, restitution, attorney's fees, or interest or settlement amounts.

Referring Provider—any provider, provider-in-fact or anyone operating on behalf of the provider who refers a recipient to another person for the purpose of providing goods, services, or supplies.

Recipient—an individual who is eligible to receive health care through the medical assistance programs.

Rule or Regulation—any rule or regulation promulgated by the department in accordance with the Administrative Procedure Act and any federal rule or regulation promulgated by the federal government in accordance with federal law.

Secretary—the secretary of the Department of Health and Hospitals, or his authorized designee.

SURS Manager—the individual designated by the Secretary as the manager of SURS or authorized designee.

Surveillance and Utilization Review Section (SURS)—the section within BHSF assigned to identify providers for review, conduct payment reviews, and sanction providers resulting from payments to and claims from providers, and any other functions or duties assigned by the Secretary.

Suspension from Participation—occurs between the issuing of the notice of the results of the informal hearing and the issuing of the final administrative adjudication or order.

Terms of the Provider Agreement—the terms contained in the provider agreement or related documents and established or provided for in R.S. 46:437.11 - 437.14 or established by law or rule.

Undersecretary—the Undersecretary of the department or authorized designee.

Violations—any practice or activity by a provider, provider-in-fact, agent-of-the-provider, affiliate, or other persons which is prohibited by law or this rule.

Withhold Payment—to reduce or adjust the amount, in whole or in part, to be paid to a provider for pending or future claims during the time of a criminal, civil, or departmental investigation or proceeding or claims review of the provider.

Working Days—Monday through Friday, except for legal holidays and other situations when the department is closed.

B. General Terms. Definitions contained in applicable federal laws and regulations shall also apply to this and all department regulations. In the case of a conflict between federal definitions and departmental definitions, the department's definition shall apply unless the federal definition, as a matter of law, supersedes a departmental definition. Definitions contained in applicable state laws shall also apply to this and all departmental definitions. In the case of a conflict between a state statutory definition and a departmental definition, the departmental definition shall apply unless the state statutory definition, as a matter of state law, supersedes the departmental definition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4105. Material

A. The Secretary of the Department of Health and Hospitals establishes the following definitions of Material:

1. For the purpose of the R.S. 48:438.3 as required under R.S. 48:438.8D, in determining whether a pattern of incorrect submissions exists in regards to an alleged false or fraudulent claim the incorrect submissions must be five (5) percent or more of the total claims submitted or to be submitted by the provider during the period covered in the civil action filed or to be filed. The total amount of claims for the purpose of this provision is the total number of claims submitted or to be submitted by the provider during the period of time and type or kind of claim which is the subject of the civil action under R.S. 48:438.3.

2. For the purpose of this regulation, in determining whether a pattern of incorrect submissions exist in regards to an alleged fraudulent or willful violation the incorrect submissions must be five (5) percent or more of the total claims being subjected to claims review under the provisions of this regulation. The total amount of claims for the purpose of this provision is the total number of claims submitted or to be submitted by the provider during the period of time and type or kind of claim which is the subject of claims review.

3. Statistically valid sampling techniques may be used by either party to prove or disprove whether the pattern was material.

B. This provision is enacted under the authority provided in R.S. 46:438.8D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4107. Random Statistical Sampling

A. Statistical Sampling techniques may be used by any party to the proceedings.

B. A statistically valid sampling technique may be used to produce a statistical extrapolation of the amount of overpayment made to a provider or the volume or number of violations committed by a provider or to disprove same.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter B. Claims Review: Prepayment or Post-payment Review

§4109. Departmental and Provider Obligations

A. The department, through the Secretary, has an obligation, imposed by federal and state laws and regulations, to:

1. review bills and claims submitted by providers before payment is made and after;

a. Payments made by the Louisiana Medicaid Program are subject to review by the Department of Health and Hospitals, Bureau of Health Services Financing, Program Integrity Division or the fiscal intermediary at anytime to ensure the quality, quantity, and need for goods, services, or

supplies provided to or for a recipient by a provider, and to protect the fiscal and programmatic integrity of the Louisiana Medicaid Program and its programs.

b. It is the function of the Program Integrity Division (PID) and the Surveillance and Utilization Review Section (SURS) to provide for and administer the utilization review process within the department.

2. assure that claims review brought under this regulation are not frivolous, vexatious or brought primarily for the purpose of harassment;

3. recognize that when determining whether a fraudulent pattern of incorrect submissions exists under this regulation the department has an obligation to demonstrate that the pattern of incorrect submissions are material as defined under this regulation prior to imposing a fine or other monetary sanction which is greater than the amount of the identified or projected overpayment resulting from the pattern of incorrect submissions;

4. recognize the need to obtain advice from applicable professions and individuals concerning the standards to be applied under this regulation. At the discretion of the Secretary he may seek advice from peer review groups which the Secretary has established for the purpose of seeking such advice;

5. recognize the right of each individual to exercise all rights and privileges afforded to that individual under the law including but not limited the right to counsel as provided under the applicable laws.

B. Providers have no right to receive payment for bills or claims submitted to BHSF or its fiscal intermediary. Providers only have a right to receive payment for valid claims. Payment of a bill or claim does not constitute acceptance by the department or its fiscal intermediary that the bill or claim is a valid claim. The provider is responsible for maintaining all records necessary to demonstrate that a bill or claim is in fact a valid claim. It is the provider's obligation to demonstrate that the bill or claim submitted was for goods, services, or supplies:

1. provided to a recipient who was entitled to receive the goods, services, or supplies;

2. were medically necessary or otherwise properly authorized;

3. were provided by or authorized by an individual with the necessary qualifications to make that determination; and

4. were actually provided to the appropriate recipient in the appropriate quality and quantity by an individual qualified to provide the good, service or supply; or

5. in the case of a claim based on a cost report, that each entry is complete, accurate and supported by the necessary documentation.

C. The provider must maintain and make available for inspection all documents required to demonstrate that a bill or claim is a valid claim. Failure on the part of the provider to adequately document means that the goods, services, or supplies will not be paid for or reimbursed by the Louisiana Medicaid program.

D. A person has no property interest in any payments or reimbursements from Medicaid which are determined to be an overpayment or are subject to payment review.

E. Providers, providers-in-fact and others, including beneficiaries must recognize that they have an obligation to obey and follow all applicable laws, regulations, policies, criteria and procedures. In the case of an action brought for a pattern of incorrect submissions, providers and providers in fact recognize that if they frivolously or unreasonably deny the existence or amount of an overpayment resulting from a pattern of incorrect submissions the department may impose judicial interest on any outstanding recovery or recoupment, or reasonable cost and expenses incurred as the direct result of the investigation or review, including but not limited to the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employees or agents.

F. In determining the amount to be paid or reimbursed to a provider any and all overpayments, recoupment or recovery must be taken into consideration prior to determining the actual amount owed to the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4111. Claims Review

BHSF establishes the following procedures for review of bills and claims submitted to it or its fiscal intermediary:

A. Prepayment Review

1. Upon concurrence of the Director of BHSF and the Director of Program Integrity, bills or claims submitted by a provider may be reviewed by the SURS or the SURS unit of the Fiscal Intermediary for fifteen (15) days from date the payment or reimbursement is ordinarily sent to a provider by BHSF or its fiscal intermediary prior to the issuing of or denial of payment or reimbursement.

2. If, during the prepayment review process, it is determined that the provider may be overpaid, BHSF or its fiscal intermediary must conduct an investigation to determine the reasons for and estimates of the amount of the alleged overpayments.

a. If it is determined that evidence exists which would lead the Director of BHSF and the Director of Program Integrity to believe that the provider, provider-in-fact, agent of the provider, or affiliate of the provider has engaged in fraudulent, false, or fictitious billing practices or willful misrepresentation, current and future payments shall be withheld.

b. If it is determined that evidence exists which would lead the Director of BHSF and the Director of Program Integrity to believe that overpayments may have occurred through reasons other than fraudulent, false or fictitious billing or willful misrepresentation, current and future payments may be withheld.

3. Prepayment review is not a sanction and cannot be appealed nor is it subject to an informal hearing. If prepayment review results in withholding of payments, the provider or provider-in-fact will be notified within five (5) working days of the determination to withhold payments. In the case of an ongoing criminal or outside governmental investigation, information related to the investigation shall not be disclosed to the provider, provider-in-fact or other person

unless release of such information is otherwise authorized or required under law. Denials or refusals to pay individual bills that are the result of the edit and audit system are not withholdings of payments.

4. Prepayment review is conducted at the absolute discretion of the Director of BHSF and the Director of Program Integrity.

B. Post-payment Review

1. Providers have a right to receive payment only for those bills that are valid claims. A person has no property interest in any payments or reimbursements from Medicaid, which are determined to be an overpayment or are subject to payment review. After payment to a provider, BHSF or its fiscal intermediary may review any or all payments made to a provider for the purpose of determining if the amounts paid were for valid claims.

2. If, during the post-payment review process, it is determined that the provider may have been overpaid, BHSF or its fiscal intermediary must conduct an investigation to determine the reasons for and estimated amounts of the alleged overpayments.

a. If it is determined that evidence exists that would lead the Director of BHSF and the Director of Program Integrity to believe that the provider, provider-in-fact, agent of the provider, or affiliate of the provider may have engaged in fraudulent, false, or fictitious billing practices or willful misrepresentation, current and future payments shall be withheld.

b. If it is determined that evidence exists that overpayments may have occurred through reasons other than fraud or willful misrepresentation, current and future payments may be withheld.

3. Post-payment review is not a sanction and is not appealable nor subject to an informal hearing. If post-payment review results in withholding of payments, the provider or provider-in-fact will be notified within five working days of the determination to withhold payments. In the case of an ongoing criminal or outside government investigation, information related to the investigation shall not be disclosed to the provider, provider-in-fact or other person. Denials or refusals to pay individual bills that are the result of the edit and audit system are not withholdings of payments.

4. Post-payment review is conducted is at the absolute discretion of the Director of BHSF and Director of Program Integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4113. Claims Review Scope and Extent

A. Prepayment and post-payment review may be limited to specific items or procedures or include all billings or claims by a provider.

B. The length of time a provider is on post-payment review shall be at the sole discretion of the Director of BHSF and the Director of Program Integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter C. Investigations

§4115. Formal or Informal Investigations

Prepayment and post-payment review may be conducted through either a formal or informal process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4117. Informal Investigatory Process

An informal investigation may be initiated without cause and requires no justification. The provider and provider-in-fact of the provider have an affirmative duty to cooperate fully with the investigation. The provider and provider-in-fact, if they have the ability to do so, shall make all records requested as part of the investigation available for review or copying. The provider and provider-in-fact, if they have the ability to do so, shall make available all agents and affiliates of the provider for the purpose of being interviewed during the course of the informal investigation at the provider's ordinary place of business or any other mutually agreeable location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4119. Formal Investigatory Process

A. The formal investigatory process must be initiated in writing by the Director of BHSF and Director of Program Integrity. The written notice of investigation shall be directed to a provider, specifically naming an investigating officer and be given to the provider, provider-in-fact or their agent. The investigating officer shall provide written notice of the investigation to the provider or a provider-in-fact of the provider at the time of the on-site investigation.

B. The written notice need not contain any reasons or justifications for the investigation, only that such an investigation has been authorized and the individual in charge of the investigation.

C. The investigating officer and the agents of the investigating officer shall have the authority to review and copy records of the provider including, but not limited to, any financial or other business records of the provider or any or all records related to the recipients, and take statements from the provider, provider-in-fact, agents of the provider and any affiliates of the provider, as well as any recipients who have received goods, services, or supplies from the provider or whom the provider has claimed to have provided goods, services, or supplies.

D. The provider and provider-in-fact of the provider have an affirmative duty to cooperate fully with the investigating

officer and agents of the investigating officer, including full and truthful disclosure of all information requested and questions asked. The provider and provider-in-fact, if they have the ability to do so, shall make all records requested by the investigating officer available for review and copying. The provider and provider-in-fact, if they have the ability to do so, shall make available all agents and affiliates of the provider for the purpose of being interviewed by the investigating officer or agent of the investigating officer at the provider's ordinary place of business or any other mutually agreeable location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:153 and 46:442.1, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4121. Investigatory Discussion

A. During the investigatory process the provider, provider-in-fact, agent of the provider, or affiliate of the provider shall be notified in writing of the time and place of an investigatory discussion. The notice shall contain the names of the individuals who are requested to be present at the discussion and any documents that the provider, provider-in-fact, agent of the provider or affiliate of the provider must bring to the discussion.

B. The provider and provider-in-fact, if they have the ability to do so, shall be responsible for assuring the attendance of individuals who are currently employed by, contracted by, or affiliated with the provider.

C. This notice may contain a request to bring records to the investigatory discussion. If such a request for records is made, the provider and provider-in-fact are responsible for having those records produced at the investigatory discussion. The provider or provider-in-fact shall be given at least five working days to comply with the request.

D. At the investigatory discussion, the authorized investigating officer can ask any of the individuals present at the discussion questions related to the provider's billing practices or other aspects directly or indirectly related to the providing of goods, supplies, and services to Medicaid recipients or nonrecipients, or any other aspect related to the provider's participation in the Louisiana Medicaid program. Any provider, provider-in-fact, agent of the provider, affiliate of the provider, or recipient brought to an investigatory discussion has an affirmative duty to fully and truthfully answer any questions asked and provide any and all information requested.

E. Any person present at an Investigatory Discussion may be represented by counsel. The exercising of a constitutional or statutory right during an Investigatory Discussion shall not be construed as a failure to cooperate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4123. Written Investigatory Reports

The investigating officer or analyst, at the discretion of the Director of Program Integrity or the SURS manager, may draft a written investigative report concerning the results of the informal or formal investigation. The Director of BHSF and Director of Program Integrity at their discretion, may release the report to outside law enforcement agencies, authorized federal representatives, the legislative auditor or any individuals within the department whom the Secretary has authorized to review such reports. No other entities or persons shall have a right to review the contents of an investigative report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter D. Conduct

§4125. Introduction

This Subchapter pertains to the kinds of conduct which are violations, the scope of a violation, types of violations and elements of violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4127. Prohibited Conduct

Violations are kinds of conduct that are prohibited and constitute a violation under this regulation. No provider, provider-in-fact, agent of the provider, billing agent, affiliate of a provider or other person may engage in any conduct prohibited by this regulation. If they do, the provider or provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person may be subject to corrective action, withholding of payment, recoupment, recovery, suspension, exclusion, posting bond or other security, monetary penalties or any other sanction listed in this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4129. Violations

A. The following is a list of violations.

1. Failure to comply with any or all federal or state laws applicable to the Medical Assistance Program or a program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent, affiliate or other person is participating is a violation of this provision.

a. Neither the Secretary, Director of BHSF, or any other person can waive or alter a requirement or condition established by statute.

b. Requirements or conditions imposed by a statute can only be waived, modified or changed through legislation.

c. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable laws.

d. Providers, providers-in-fact, agents of providers, billing agents, and affiliates of providers are presumed to know the law. Ignorance of the applicable laws is not a defense to any administrative action.

2. Failure to comply with any or all federal or state regulations or rule applicable to the Medical Assistance Program or a program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider is participating is a violation of this provision.

a. Neither the Secretary, Director BHSF or any other person can waive or alter a requirement or condition established by regulation.

b. Requirements or conditions imposed by a regulation can only be waived, modified, or changed through formal promulgation of a new or amended regulation, unless authority to do so is specifically provided for in the regulation.

c. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable regulations.

d. Providers, providers-in-fact, agents of providers, and affiliates of the provider are presumed to know the regulations and rules applicable to participation in the Medical Assistance Program or one or more of its programs in which they are participating. Ignorance of the applicable regulations is not a defense to any administrative action.

3. Failure to comply with any or all policies, criteria or procedures of the Medical Assistance Program or the applicable program of the Medical Assistance Program in which the provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider is participating is a violation of this provision.

a. Policies, criteria and procedures are contained in program manuals, training manuals, remittance advice, provider updates or bulletins issued by or on behalf of the Secretary or Director of BHSF.

b. Policies, criteria and procedures can be waived, amended, clarified, repealed or otherwise changed, either generally or in specific cases, only by the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF.

c. Such waivers, amendments, clarifications, repeals, or other changes must be in writing and state that it is a waiver, amendment, clarification, or change in order to be effective.

d. Notice of the policies, criteria and procedures of the Medical Assistance Program and its programs are provided to providers upon enrollment and receipt of a provider number. It is the duty of the provider at the time of enrollment or re-enrollment to obtain the policies, criteria, and procedures, which are in effect at the time of enrollment or re-enrollment.

e. Waivers, amendments, clarifications, repeals, or other changes to the policies, criteria, or procedures must be in writing and are generally contained in a new or reissued program manual, new manual pages, remittance advice, provider updates, or specifically designated bulletins from the Secretary, Undersecretary, Deputy Secretary or Director of BHSF.

f. Waivers, amendments, clarifications, repeals or other changes are mailed to the provider at the address given to BHSF or the fiscal intermediary by the provider for the express purpose of receiving such notifications.

i. It is the duty of the provider to provide the above address and make arrangements to receive these mailings through that address. This includes the duty to inform BHSF or the fiscal intermediary of any changes in the above address prior to actual change of address.

ii. Mailing of a manual, new manual pages, provider update, bulletins, or remittance advice to the provider's latest listed address creates a rebuttable presumption that the provider received it. The burden of proving lack of notice of policy, criteria, or procedure or waivers, amendments, clarifications, repeals, or other changes in same is on the party asserting it.

iii. Providers and providers-in-fact are presumed to know the applicable policies, criteria and procedures and any or all waivers, amendments, clarifications, repeals, or other changes to the applicable rules, policies, criteria and procedures which have been mailed to the address provided by the provider for the purpose of receiving notice of same.

iv. Ignorance of an applicable policy, criteria, or procedure or any and all waivers, amendments, clarifications, repeals, or other changes to applicable policies, criteria and procedures is not a defense to an administrative action brought against a provider or provider-in-fact. Lack of notice of a policy, criteria, or procedure or waiver, amendment, clarification, repeal, or other change of the same is a defense to a violation based on abusive, fraudulent, false, or fictitious billing practice or willful practices or the imposition of any sanction except issuing a warning, education and training, prior authorization, posting bond or other security, recovery of overpayment or recoupment of overpayment. Lack of notice of a policy, criteria, or procedure or waivers, amendments, clarifications, repeals, or other changes to applicable policies, criteria, or procedures is not a defense to a violation, which is aberrant.

g. Providers and providers-in-fact are required and have an affirmative duty to fully inform all their agents and affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the applicable policies, criteria, and procedures and any waivers, amendments, clarifications, repeals, or other changes in applicable policies, criteria, or procedures.

4. Failure to comply with one or more of the terms or conditions contained in the provider's provider agreement or any and all forms signed by or on behalf of the provider setting forth the terms and conditions applicable to participation in the Medical Assistance Program or one or more of its programs is a violation of this provision.

a. The terms or conditions of a provider agreement or those contained in the signed forms, unless specifically provided for by law or regulation or rule, can only be waived, changed or amended through mutual written agreement between the provider and the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF. Those conditions or terms that are established by law or regulation or rule may not be waived, altered, amended, or otherwise changed except through legislation or rule making.

b. A waiver, change, or amendment to a term or condition of a provider agreement and any signed forms must be reduced to writing and be signed by the provider and the Secretary, Undersecretary, Deputy Secretary or the Director of BHSF in order to be effective.

c. Such mutual agreements cannot waive, change or amend the law, regulations, rules, policies, criteria or procedures.

d. The provider and provider-in-fact are presumed to know the terms and conditions in their provider agreement and any signed forms related thereto and any changes to their provider agreement or the signed forms related thereto.

e. The provider and provider-in-fact are required and have an affirmative duty to fully inform all their agents or affiliates, who are performing any function connected to the provider's activities related to the Medicaid program, of the terms and conditions contained in the provider agreement and the signed forms related thereto and any change made to them. Ignorance of the terms and conditions in the provider agreement or signed forms or any changes to them is not a defense.

Note: The Department, BHSF or the fiscal intermediary may, from time to time, provide training sessions and consultation on the law, regulations, rules, policies, criteria, and procedures applicable to the Medical Assistance Program and its programs. These training sessions and consultations are intended to assist the provider, provider-in-fact, agents of providers, billing agents, and affiliates. Information presented during these training sessions and consultations do not necessarily constitute the official stands of the department and BHSF in regard to the law, regulations and rules, policies, or procedures unless reduced to writing in compliance with this Subpart.

5. Making a false, fictitious, untrue, misleading statement or concealment of information during the application process or not fully disclosing all information required or requested on the application forms for the Medicaid Assistance Program, provider number, enrollment paperwork, or any other forms required by the department, BHSF or its fiscal intermediary that is related to enrollment in the Medical Assistance Program or one of its programs or failing to disclose any other information which is required under this regulation, or other departmental regulations, rules, policies, criteria, or procedures is a violation of this provision. This includes the information required under R.S. 46:437.11 - 437.14. Failure to pay any fees or post security related to enrollment is also a violation of this Section.

a. The provider and provider-in-fact have an affirmative duty to inform BHSF in writing through provider enrollment of any and all changes in ownership, control, or managing employee of a provider and fully and completely disclose any and all administrative sanctions, withholding of payments, criminal charges, or convictions, guilty pleas, or no contest pleas, civil judgments, civil fines, or penalties imposed

on the provider, provider-in-fact, agent of the provider, billing agent, or affiliates of the provider which are related to Medicare or Medicaid in this or any other state or territory of the United States.

i. Failure to do so within ten (10) working days of when the provider or provider-in-fact knew or should have known of such a change or information is a violation of this provision.

ii. If it is determined that a failure to disclose was willful or fraudulent, the provider's enrollment can be voided back to the date of the willful misrepresentation or concealment or fraudulent disclosure.

6. Not being properly licensed, certified, or otherwise qualified to provide for the particular goods, services, or supplies provided or billed for or such license, certificate, or other qualification required or necessary in order to provide a good, service, or supply has not been renewed or has been revoked, suspended or otherwise terminated is a violation of this provision. This includes, but is not limited to, professional licenses, business licenses, paraprofessional certificates, and licenses or other similar licenses or certificates required by federal, state, or local governmental agencies, as well as, professional or paraprofessional organizations or governing bodies which are required by the Medical Assistance Program. Failure to pay required fees related to licensure or certification is also a violation of this provision.

7. Having engaged in conduct or performing an act in violation of official sanction which has been applied by a licensing authority, professional peer group, or peer review board or organization, or continuing such conduct following notification by the licensing or reviewing body that said conduct should cease is a violation of this provision.

8. Having been excluded or suspended from participation in Medicare is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded or suspended from Medicare during the period of exclusion or suspension.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such exclusions or suspensions on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with or affiliate with any person or entity who has been excluded or suspended from Medicare; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been excluded or suspended from Medicare.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents, or affiliates is a violation of Paragraph 5 of this Subsection.

c. If the terms of the exclusion or suspension have been completed, no violation of this provision has occurred.

9. Having been excluded, suspended, or otherwise terminated from participation in Medicaid or other publicly funded health care or insurance programs of this state or any other state or territory of the United States is a violation of this provision. It is also a violation of this Section for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded, suspended or otherwise terminated from participation in Medicaid or other publicly funded health care or health insurance programs of this state or another state or territory of the United States. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been excluded from Medicaid or other publicly funded health care or health insurance programs of this state or any other state or territory of the United States during the period of exclusion or suspension.

a. The provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any such exclusions or suspensions on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been excluded or suspended from any Medicaid or other publicly funded health care or health insurance programs; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been excluded or suspended from any Medicaid or other publicly funded health care or health insurance programs.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provisions by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If the terms of the exclusion or suspension have been completed, no violation of this provision has occurred.

10. Having been convicted of, pled guilty, or pled no contest to a crime, including attempts or conspiracy to commit a crime, in federal court, any state court, or court in any United States territory related to providing goods, services, or supplies or billing for goods, services, or supplies under Medicare, Medicaid, or any other program involving the expenditure of public funds is a violation of this provision. It is also a violation for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest to a crime, including attempts to or conspiracy to commit a crime, in federal court, any state court, or court in any United States territory related to providing goods, services, or supplies or billing for goods, services, or supplies under Medicare, Medicaid, or any other program involving the expenditure of public funds.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilt pled, or no contest plea to the above felony criminal conduct on the part of the provider, provider-in-fact, their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, pled guilty to, or pled no contest to the above felony criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above felony criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

11. Having been convicted of, pled guilty to, or pled no contest to Medicaid Fraud in a Louisiana court or any other criminal offense, including attempts to or conspiracy to commit a crime, relating to the performance of a provider agreement with the Medical Assistance Program is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest to Medicaid Fraud in a Louisiana court or any other criminal offense, including attempts to or conspiracy to commit a crime, relating to the performance of a provider agreement with the Louisiana Medicaid program.

a. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, plead guilty to, or plead no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

12. Having been convicted of, pled guilty, or pled no contest in federal court, any state court, or court of any United States territory to criminal conduct involving the negligent practice of medicine or any other activity or skill related to an

activity or skill performed by or billed by that person or entity under the Medical Assistance Program or one of its programs or which caused death or serious bodily, emotional, or mental injury to an individual under their care is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, pled guilty, or pled no contest in federal court, any state court, or court of any United States territory to criminal conduct involving the negligent practice of medicine or any other activity or skill related to an activity or skill performed by or billed by that person or entity under the Medical Assistance Program or one of its programs or which caused death or serious bodily, emotional, or mental injury to an individual under their care.

a. The provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, or their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, plead guilty to, or plead no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment or contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) year period, this provision is not violated. Criminal conduct, which has been pardoned, does not violate this provision.

13. Having been convicted of, pled guilty, or pled no contest to Medicaid, Medicare or health care fraud, including attempts to or conspiracy to commit Medicaid, Medicare or health care fraud or any other criminal offense related to the performance of or providing any goods, services, or supplies to Medicaid or Medicare recipients or billings to any Medicaid, Medicare, publicly funded health care or publicly funded health insurance programs in any state court, federal court or a court in any territory of the United States is a violation of this provision. It is also a violation of this provision for a provider to employ, contract with, or otherwise affiliate with any person who has been convicted of, plead guilty, or plead no contest to Medicaid, Medicare, or health care fraud, including attempts to or conspiracy to commit Medicaid, Medicare or health care fraud, or any other criminal offense related to the performance of or providing any goods, services, or supplies to Medicaid or Medicare recipients or billings to any Medicaid, Medicare, publicly funded health care or publicly funded health insurance programs in any state court, federal court or a court in any territory of the United States.

a. The provider and provider-in-fact after they knew or should have know of same have an affirmative duty to:

i. inform BHSF in writing of any such convictions, guilty plea, or no contest plea to the above criminal conduct on the part of the provider, provider-in-fact, or their agents or affiliates;

ii. not hire, contract with, or affiliate with any person or entity who has been convicted, pled guilty to, or pled no contest to the above criminal conduct; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has been convicted, pled guilty to, or pled no contest to the above criminal conduct.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or affiliates is a violation of Paragraph 5 of this Subsection.

c. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) year period, this provision is not violated. Criminal conduct that has been pardoned does not violate this provision.

14. Having been convicted of, pled guilty to, or pled no contest to in any federal court, state court, or court in any territory of the United States to any of the following criminal conduct, attempt to commit or conspiracy to commit any of the following crimes are violations of this provision:

a. bribery or extortion;

b. sale, distribution, or importation of a substance or item that is prohibited by law;

c. tax evasion or fraud;

d. money laundering;

e. securities or exchange fraud;

f. wire or mail fraud;

g. violence against a person;

h. act against the aged, juveniles or infirmed;

i. any crime involving public funds; or

j. other similar felony criminal conduct.

i. The provider and provider-in-fact after they knew or should have known of same have an affirmative duty to:

(a). inform BHSF in writing of any such criminal charges, convictions, or pleas on the part of the provider, provider-in-fact, their agents, or their affiliates;

(b). not hire, contract with, or affiliate with any person or entity who has engaged in any such criminal misconduct; and

(c). terminate any and all ownership, employment and contractual relationships with any person or entity that has engaged in any such criminal misconduct.

ii. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or their affiliates is a violation of Paragraph 5 of this Subsection.

iii. If three (3) years have passed since the completion of the sentence and no other criminal misconduct by that person has occurred during that three (3) -year period, this provision is not violated. Criminal conduct that has been pardoned does not violate this provision.

15. Being found in violation of or entering into a settlement agreement under this state's Medical Assistance Program Integrity Law, the Federal False Claims Act, Federal Civil Monetary Penalties Act, or any other similar civil statutes in this state, in any other state, United States or United States territory is a violation of this provision.

a. Relating to violations of this provision, the provider and provider-in-fact after they knew or should have known have an affirmative duty to:

i. inform BHSF in writing of any violations of this provision on the part of the provider, provider-in-fact, their agents or their affiliates;

ii. not hire, contract with or affiliate with any person or entity who has violated this provision; and

iii. terminate any and all ownership, employment and contractual relationships with any person or entity that has violated this provision.

b. Failure to do so on the part of the provider or provider-in-fact within ten (10) working days of when the provider or provider-in-fact knew or should have known of any violation of this provision by the provider, provider-in-fact, their agents or their affiliates is a violation of Paragraph 5 of this Subsection.

c. If a False Claims Act action or other similar civil action is brought by a Qui-Tam plaintiff or under a little attorney general or other similar provision, no violation of this provision has occurred until the defendant has been found liable in the action.

d. If three (3) years have passed from the time a person is found liable or entered a settlement agreement under the False Claims Act or other similar civil statute and the conditions of the judgement or settlement have been satisfactorily fulfilled, no violation has occurred under this provision.

16. Failure to correct the deficiencies or problem areas listed in a notice of corrective action or failure to meet the provisions of a corrective action plan or failure to correct deficiencies in delivery of goods, services, or supplies or deficiencies in billing practices or record keeping after receiving written notice to do so from the Secretary, Director of BHSF or Director of Program Integrity is a violation of this provision.

17. Having presented, causing to be presented, attempting to present, or conspiring to present false, fraudulent, fictitious, or misleading claims or billings for payment or reimbursement to the Medical Assistance Program through BHSF or its authorized fiscal intermediary for goods, services, or supplies, or in documents related to a cost report or other similar submission is a violation of this provision.

18. Engaging in the practice of charging or accepting payments, in whole or in part, from one or more recipients for goods, services, or supplies for which the provider has made or will make a claim for payment to the Louisiana Medicaid program is a violation of this provision, unless this prohibition

has been specifically excluded within the program under which the claim was submitted or will be made or the payment by the recipient is an authorized copayment or is otherwise specifically authorized by law or regulation. Having engaged in practices prohibited by R.S. 46:438.2 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

19. Having rebated or accepted a fee or a portion of a fee or anything of value for a Medicaid recipient referral is a violation of this provision, unless this prohibition has been specifically excluded within the program or is otherwise authorized by statute or regulation, rule, policy, criteria or procedure of the department through BHSF. Having engaged in practices prohibited by R.S. 46:438.2 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

20. Paying to another a fee in cash or kind for the purpose of obtaining recipient lists or recipients names is a violation of this provision, unless this prohibition has been specifically excluded within the program or is otherwise authorized by statute or regulation, rule, policy, criteria or procedure of the department through BHSF. Using or possessing any recipient list or information, which was obtained through unauthorized means, or using such in an unauthorized manner is also a violation of this provision. Having engaged in practices prohibited by R.S. 46:438.2 or R.S. 46:438.4 or the federal anti-kickback or anti-referral statutes is also a violation of this provision.

21. Failure to repay or make arrangements to repay an identified overpayment or otherwise erroneous payment within ten (10) working days after the provider or provider-in-fact receives written notice of same is a violation of this provision. Failure to pay any and all administrative or court ordered restitution, civil money damages, criminal or civil fines, monetary penalties or costs or expenses is also a violation of this provision. Failure to pay any assessed provider fee or payment is also a violation of this provision.

22. Failure to keep or make available for inspection, audit, or copying records related to the Louisiana Medicaid program or one or more of its programs for which the provider has been enrolled or issued a provider number or has failed to allow BHSF or its fiscal intermediary or any other duly authorized governmental entity an opportunity to inspect, audit, or copy those records is a violation of this provision. Failure to keep records required by Medicaid or one of its programs until payment review has been conducted is also a violation of this provision;

23. Failure to furnish or arrange to furnish information or documents to BHSF within five (5) working days after receiving a written request to provide that information to BHSF or its fiscal intermediary is a violation of this provision.

24. Failure to cooperate with BHSF, its fiscal intermediary or the investigating officer during the post-payment or prepayment process, investigative process, an investigatory discussion, informal hearing or the administrative appeal process or any other legal process or making, or caused to be made, a false or misleading statement of a material fact in connection with the post-payment or prepayment process, corrective action, investigation process, investigatory

discussion, informal hearing or the administrative appeals process or any other legal process is a violation of this provision. The exercising of a constitutional or statutory right is not a failure to cooperate. Requests to for scheduling changes or asking questions are not grounds for failure to cooperate.

25. Making, or causing to be made, a false, fictitious or misleading statement or making, or caused to be made, a false, fictitious or misleading statement of a fact in connection with the administration of the Medical Assistance Program which the person knew or should have known was false, fictitious or misleading is a violation of this provision. This includes, but is not limited to, the following:

- a. claiming costs for noncovered or nonchargeable services, supplies, or goods disguised as covered items;
- b. billing for services, supplies, or goods which are not rendered to person(s) who are eligible to receive the services, supplies, or goods;
- c. misrepresenting dates and descriptions and the identity of the person(s) who rendered the services, supplies, or goods;
- d. duplicate billing that are abusive, willful or fraudulent;
- e. upcoding of services, supplies, or goods provided;
- f. misrepresenting a recipients need or eligibility to receive services, goods, or supplies or the recipients eligibility for a program;
- g. improperly unbundling goods, services, or supplies for billing purposes;
- h. misrepresenting the quality or quantity of services, goods, or supplies;
- i. submitting claims for payment for goods, services, and supplies provided to nonrecipients if the provider knew or should have known that the individual was not eligible to receive the good, supply, or service at the time the good, service, or supply was provided or billed for.
- j. Furnishing or causing to be furnished goods, services, or supplies to a recipient which;
 - i. are in excess of the recipient's needs;
 - ii. were or could be harmful to the recipient;
 - iii. serve no real medical purpose;
 - iv. are of grossly inadequate or inferior quality;
 - v. were furnished by an individual who was not qualified under the applicable Louisiana Medicaid program to provide the good, service, or supply;
 - vi. the good, service, or supply was not furnished under the required programmatic authorization; or
 - vii. the goods, services or supplies provided were not provided in compliance with the appropriate licensing or certification board's regulations, rules, policies or procedures governing the conduct of the person who provided the goods, services or supplies.
- k. providing goods, services, or supplies in a manner or form that is not within the normal scope and range of the standards used within the applicable profession.
 - l. billing for goods, services, or supplies in a manner inconsistent with the standards established in relevant billing codes or practices.

26. In the case of a managed care provider or provider operating under a voucher, notwithstanding any contractual agreements to the contrary, failure to provide all medically necessary goods, services, or supplies of which the recipient is in need of and entitled to is a violation of this provision.

27. Submitting bills or claims for payment or reimbursement to the Louisiana Medicaid program through BHSF or its fiscal intermediary on behalf of a person or entity which is serving out a period of suspension or exclusion from participation in the Medical Assistance Program or one of its programs, Medicare, Medicaid, publicly funded health care or publicly funded health insurance program in any other state or territory of the United States or the United States is a violation of this provision except for bona fide emergency services provided during a bona fide medical emergency.

28. Engaging in a systematic billing practice which is abusive or fraudulent and which maximizes the costs to the Louisiana Medicaid program after written notice to cease such billing practice(s) is a violation of this provision.

29. Failure to meet the terms of an agreement to repay or settlement agreement entered into under this state's Medical Assistance Program Integrity Law or this regulation is a violation of this provision.

30. If the provider, a person with management responsibility for a provider, an officer or person owning, either directly or indirectly, any shares of stock or other evidence of ownership in a corporate provider, an owner of a sole proprietorship which is a provider, or a partner in a partnership which is a provider, is found to fall into one or more of the following categories:

- a. the provider was previously terminated from participation in the Louisiana Medicaid program or one or more of its programs; and
 - i. was a person with management responsibility for a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs; or
 - ii. was an officer or person owning, directly or indirectly, any shares of stock or other evidence of ownership in a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs; or
 - iii. was an owner of a sole proprietorship or a partner of a partnership in a previously terminated provider during the time of the conduct which was the basis for that provider's termination from participation in the Louisiana Medicaid program or one or more of its programs.
- b. the provider has been found to have engaged in practices prohibited by federal or state law or regulation;
 - i. was a person with management responsibility for a provider during the time the provider engaged in practices prohibited by federal or state law or regulation; or
 - ii. was an officer or person owning, directly or indirectly, any shares of stock or other evidence of ownership in a provider during the time the provider engaged in practices prohibited by federal or state law or regulation; or

iii. was an owner of a sole proprietorship or a partner of a partnership which was a provider during the time the provider engaged in practices prohibited by federal or state law or regulation.

c. the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

i. was a person with management responsibility for a provider during the time the provider engaged in practices for which the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

ii. was an officer or person owning, directly or indirectly, any of the shares of stock or other evidence of ownership in a provider during the time the provider engaged in practices the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law;

iii. was an owner of a sole proprietorship or a partner of a partnership which was a provider during the time the provider engaged in practices the provider was convicted of Medicaid or Medicare fraud or other criminal misconduct related to Medicaid or Medicare under federal or state law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4131. Scope of a Violation

A. Violations may be imputed in the following manner.

1. The conduct of a provider-in-fact is always attributable to the provider. The conduct of a managing employee is always attributable to the provider and provider-in-fact.

2. The conduct of an agent of the provider, billing agent, or affiliate of the provider may be imputed to the provider or provider-in-fact if the conduct was performed within the course of his duties for the provider or was effectuated by him with the knowledge or approval of the provider or provider-in-fact.

3. The conduct of any person or entity operating on behalf of a provider may be imputed to the provider or provider-in-fact.

4. The provider and provider-in-fact are responsible for the conduct of any and all officers, employees or agents of the provider including any with whom the provider has a contract to provide managerial or administrative functions for the provider or to provide goods, services, or supplies on behalf of the provider. The conduct of these persons or entities may be imputed to the provider or provider-in-fact.

5. A violation under one Medicaid number may be extended to any and all Medicaid Numbers held by the provider or provider-in-fact or which may be obtained by the provider or provider-in-fact.

6. Recoupments or recoveries may be made from any payments or reimbursement made under any and all provider numbers held by or obtained by the provider or provider-in-fact.

7. Any sanctions, including recovery or recoupment, imposed on a provider or provider-in-fact shall remain in effect until its terms have been satisfied. Any person or entity who purchases, merges or otherwise consolidates with a provider or employs or affiliates a provider-in-fact, agent of the provider or affiliate of a provider who has had sanctions imposed on it under this regulation assumes liability for those sanctions, if the person or entity knew or should have known about the existence of the sanctions, and may be subject to additional sanctions based on the purchase, merger, consolidation, affiliation or employment of the sanctioned provider or provider-in-fact.

8. A provider or provider-in-fact who refers a recipient to another for the purpose of providing a good, service, or supply to a recipient may be held responsible for any or all over-billing by the person to whom the recipient was referred provided the referring provider or person knew or should have known that such over-billing was likely to occur.

9. Providers which are legal entities, i.e. clinics, corporations, HMO's, PPO's, etc., may be held jointly liable for the repayment or recoupment of any person within that legal entity if it can be shown that the entity received any economic benefit related to the overpayment.

10. Withholdings of payments imposed on a provider may be extended to any or all provider numbers held or obtained by that provider or any provider-in-fact of that provider.

B. Attributing, imputing, extension or imposing under this provision shall be done on a case-by-case basis with written reasons for same. The written reasons must demonstrate that the imputing was based on knowledge of the violation and that the person to which it was imputed received an economic benefit as a result of the violation. The person to whom the violation has been imputed may only be sanctioned up to the amount of the economic benefit received by that individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4133. Types of Violation

A. Violations can be of four different types: aberrant; abusive; willful; or fraudulent. This Subsection defines these four different types of violations.

1. *Aberrant Practice*—any practice that is inconsistent with the laws, regulations, rules, policies, criteria or practices or the terms in the provider agreement or signed forms related to the provider agreement and are applicable to the Louisiana Medicaid program or one or more of its programs in which the provider is enrolled or was enrolled at the time of the alleged occurrence.

2. *Abusive Practice*—any practice of which the provider has been informed in writing by the Secretary, Director of BHSF, or Director of Program is aberrant, and the provider, provider-in-fact, agent of the provider, or an affiliate of the provider continues to engage in that practice after the written notice to discontinue such a practice has been provided to the provider or provider-in-fact.

3. *Willful Practice*—a deception or misrepresentation made by a person who knew, or should have known, that the deception or misrepresentation was false, untrue, misleading, or wrong or an aberrant or abusive practice which is so pervasive as to indicate that the practice was willful. A willful practice also includes conduct that would be in violation of this state's Medical Assistance Program Integrity Law.

4. *Fraudulent Practice*—a deception or misrepresentation made by a person who had knowledge that the deception or misrepresentation was false, untrue or wrong or deliberately failed to take reasonable steps to determine the truthfulness or correctness of information, and the deception or misrepresentation did or could have resulted in payment of one or more claims for which payment should not have been made or payment on one or more claims which would or could be greater than the amount entitled to. This includes any act or attempted act that could constitute fraud under either criminal or civil standards under applicable federal or Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4135. Elements

A. Each type of violation contains different elements, which must be established.

1. An aberrant practice is a technical or inadvertent violation where the person did not knowingly engage in prohibited conduct. A finding of an aberrant practice does not require proof of knowledge, intent, or overpayment or attempted overpayment.

2. An abusive practice occurs where the person has been informed in writing that the person has engaged in an aberrant practice and the person continues to engage in the practice after such notice but the person has not obtained or attempted to obtain an overpayment. A finding of an abusive practice requires notice of the aberrant practice and its continued existence following that notice, but does not require proof of intent or overpayment or attempted overpayment.

3. A willful practice occurs when the person knew or should have known of the prohibited conduct and the person has obtained or attempted to obtain overpayment. A finding of willful practice requires that the person knew or should have known of the deception or misrepresentation, but does not require proof of intent or overpayment or attempted overpayment.

4. A fraudulent practice occurs when the person had actual knowledge of the prohibited conduct and knowingly obtained or attempted to obtain overpayment. A finding of fraudulent practice requires knowledge, intent and overpayment or attempted overpayment.

B. Providers, providers-in-fact, agents of the provider, affiliates of the provider and other persons may be found to have engaged in the same prohibited conduct but committed different types of violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter E. Administrative Sanctions, Procedures and Processes

§4137. Sanctions for Prohibited Conduct

A. Any or all of the following sanctions may be imposed for any one or more of the above listed kinds of prohibited conduct, except as provided for in this regulation:

1. issue a warning to a provider or provider-in-fact or other person through written notice or consultation;

2. require that the provider or provider-in-fact, their affiliates, and agents receive education and training in laws, regulations, rules, policies, criteria and procedures, including billing, at the provider's expense;

3. require that the provider or provider-in-fact receive prior authorization for any or all goods, services or supplies under the Louisiana Medicaid program or one or more of its programs;

4. require that some or all of the provider's claims be subject to manual review.

5. require a provider or provider-in-fact to post a bond or other security or increase the bond or other security already posted as a condition of continued enrollment in the Louisiana Medicaid program or one or more of its programs;

6. require that a provider terminate its association with a provider-in-fact, agent of the provider, or affiliate as a condition of continued enrollment in the Louisiana Medicaid program or one or more of its programs;

7. prohibit a provider from associating, employing or contracting with a specific person or entity as a condition of continued participation in the Louisiana Medicaid program or one or more of its programs;

8. prohibit a provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider from performing specified tasks or providing goods, services, or supplies at designated locations or to designated recipients or classes or types of recipients;

9. prohibit a provider, provider-in-fact, or agent from referring recipients to another designated person or purchasing goods, services, or supplies from designated persons;

10. recoupment;

11. recovery;

12. impose judicial interest on any outstanding recovery or recoupment;

13. impose reasonable costs or expenses incurred as the direct result of the investigation or review, including but not limited to the time and expenses incurred by departmental employees or agents and the fiscal intermediary's employee or agent;

14. exclusion from the Louisiana Medicaid program or one or more of its programs;

15. suspension from the Louisiana Medicaid program or one or more of its programs pending the resolution of the departments administrative appeals process;

16. impose a bond or other form of security as a condition of continued participation in the Medical Assistance Program;

17. require the forfeiture of a bond or other security;
18. impose an arrangement to repay;
19. impose monetary penalties not to exceed \$10,000 per violation;
20. impose withholding of payments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4139. Scope of Sanctions

A. Sanction(s) imposed can be extended to other persons or entities and to other provider numbers held or obtained by the provider in the following manner:

1. sanction(s) imposed on a provider or provider-in-fact may be extended to a provider or provider-in-fact;
2. sanction(s) imposed on an agent of the provider or affiliate of the provider may be imposed on the provider or provider-in-fact if it can be shown that the provider or provider-in-fact knew or should have known about the violation(s) and failed to report the violation(s) to BHSF in writing in a timely manner;
3. sanction(s) imposed on a provider or provider-in-fact arising out of goods, services, or supplies to a referred recipient may also be imposed on the referring provider if it can be shown that the provider or provider-in-fact knew or should have known about the violation(s) and failed to report the violation(s) to BHSF in writing in a timely manner;
4. sanction(s) imposed under one provider number may be extended to all provider numbers held by or which may be obtained in the future by the sanctioned provider or provider-in-fact, unless and until the terms and conditions of the sanction(s) has been fully satisfied.
5. sanction(s) imposed on a person remains in effect unless and until its terms and conditions are fully satisfied. The terms and conditions of the sanction(s) remain in effect in the event of the sale or transfer of ownership of the sanctioned provider;

a. the entity or person who obtains ownership interest in a sanctioned provider assumes liability and responsibility for the sanctions imposed on the purchased provider including, but not limited to, all recoupments or recovery of funds or arrangements to repay that the entity or person knew or should have known about;

b. an entity or person who employs or otherwise affiliates itself with a provider-in-fact who has been sanctioned assumes the liability and responsibility for the sanctions imposed on the provider-in-fact that the entity or person knew or should have known about;

c. any entity or person who purchases an interest in, merges with or otherwise consolidates with a provider which has been sanctioned assumes the liability and responsibility for the sanction(s) imposed on the provider that the entity or person knew or should have known about.

B. Exclusion from participation in the Louisiana Medicaid program precludes any such person from submitting claims for payment, either personally or through claims submitted by any other person or entity, for any goods, services, or supplies provided by an excluded person or entity, except bona fide

emergency services provided during a bona fide medical emergency. Any payments made to a person or entity, which are prohibited by this provision, shall be immediately repaid to the Medical Assistance Program through BHSF by the person or entity which received the payments.

C. No provider shall submit claims for payment to the department or its fiscal intermediary for any goods, services, or supplies provided by a person or entity within that provider who has been excluded from the Medical Assistance Program or one or more of its programs for goods, services, or supplies provided by the excluded person or entity under the programs which it has been excluded from except for goods, services, or supplies provided prior to the exclusion and for bona fide emergency services provided during a bona fide medical emergency. Any payments made to a person or entity, which are prohibited by this provision, shall be immediately repaid to the Medical Assistance Program through BHSF by the person or entity which received the payments.

D. When the provisions of §4133 B-C are violated, the person or entity which committed the violations may be sanctioned using any and all of the sanctions provided for in this rule.

E. Extending of sanctions must be done on a case-by-case basis.

F. The provisions in R.S. 46:437.10 shall apply to all sanctions and withholding of payments imposed pursuant to this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4141. Imposition of Sanction(s)

A. The decision as to the sanction(s) to be imposed shall be at the discretion of the Director of BHSF and Director of Program Integrity except as provide for in this provision, unless the sanction is mandatory. In order to impose a sanction the Director of BHSF and the Director of Program Integrity must concur. One or more sanctions may be imposed for a single violation. The imposition of one sanction does not preclude the imposition of another sanction for the same or different violations.

B. At the discretion of the Director of BHSF and the Director of Program Integrity each occurrence of misconduct may be considered a violation or multiple occurrences of misconduct may be considered a single violation or any combination thereof.

C. The following factors may be considered in determining the sanction(s) to be imposed:

1. seriousness of the violation(s);
2. extent of the violation(s);
3. history of prior violation(s);
4. prior imposition of sanction(s);
5. prior provision of education;
6. willingness to obey program rules;
7. whether a lesser sanction will be sufficient to remedy the problem;
8. actions taken or recommended by peer review groups or licensing boards;

9. cooperation related to reviews or investigations by the department or cooperation with other investigatory agencies; and

10. willingness and ability to repay identified overpayments.

D. Notwithstanding §4141.A, sanctions of judicial interest, costs and expenses may only be imposed upon a finding willful or fraudulent practice or upon a finding that the persons' denial of prohibited conduct was frivolous.

E. Notwithstanding §4141.A, a monetary penalty may be imposed only after a finding that the violation involved a willful or fraudulent practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law)

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4143. Mandatory Sanctions

A. Mandatory Exclusion from the Medical Assistance Program. Notwithstanding any other provision to the contrary, Director of BHSF and Director of Program Integrity have no discretion and must exclude the provider, provider-in-fact or other person from the Medical Assistance Program if the violation involves one or more of the following:

1. a conviction, guilty plea, or no contest plea to a criminal offense(s) in federal or Louisiana state court related, either directly or indirectly, to participation in either Medicaid or Medicare;

2. has been excluded from Louisiana Medicaid or Medicare; or

3. has failed to meet the terms and conditions of a Repayment Agreement, settlement or judgment entered into under this state's Medical Assistance Program Integrity Law.

a. In these situations the exclusion from the Medical Assistance Program is automatic and can be longer than, but not shorter in time than, the sentence imposed in criminal court, the exclusion from Medicaid or Medicare or time provided to make payment;

b. The exclusion is retroactive to the time of the conviction, plea, exclusion, the date the repayment agreement was entered by the department or the settlement or judgment was entered under this state's Medical Assistance Program Integrity Law;

c. proof of the conviction, plea, exclusion, failure to meet the terms and conditions of a repayment agreement, or settlement or judgment entered under this state's Medical Assistance Program Integrity Law can be made through certified or true copies of the conviction, plea, exclusion, agreement to repay, settlement, or judgment or via affidavit.

i. if the conviction is overturned, plea set aside, or exclusion or judgment are reversed on appeal, the mandatory exclusion from the Medical Assistance Program shall be removed;

ii. the person or entity that is excluded from the Medical Assistance Program under this Subsection is entitled to an administrative appeal of a mandatory exclusion;

iii. the facts and law surrounding the criminal matter, exclusion, repayment agreement or judgment which serves as the basis for the mandatory exclusion from the Medical

Assistance Program cannot be collaterally attacked at the administrative appeal.

B. Mandatory Arrangements to Pay, Recoupment or Recovery. If the violation(s) was fraudulent or willful and resulted in an identified overpayment, the Secretary, Director of BHSF, and Director of Program Integrity has no discretion. The person or entity must have imposed on them an arrangement to repay, recoupment or recovery of the identified overpayment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4145. Effective Date of a Sanction

All sanctions, except exclusion, are effective upon the issuing of the notice of the results of the informal hearing. The filing of a timely and adequate notice of administrative appeal does not suspend the imposition of a sanction(s), except that of exclusion. In the case of the imposition of exclusion from the Louisiana Medicaid Program or one or more of its programs, the filing of a timely and adequate notice of appeal suspends the exclusion. In the case of an exclusion, the Director of BHSF and Director of Program Integrity may impose a suspension from the Medical Assistance Program or one or more of its programs during the pendency of an administrative appeal. A sanction becomes a final administrative adjudication if no administrative appeal has been filed, and the time for filing an administrative appeal has run. Or in the case of a timely filed notice of administrative appeal, a sanction(s) becomes a final administrative adjudication when the order on appeal has been entered by the Secretary. In order for an appeal to be filed timely it must be sent to the Department's Bureau of Appeals within thirty (30) days from the date on the letter informing the person of the results of that person's informal discussion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter F. Withholding

§4147. Withholding of Payments

A. If, during the course of claims review, the Director of BHSF and the Director of Program Integrity has a reasonable expectation that an overpayment to a provider may have occurred or may occur, that a provider or provider-in-fact has failed to cooperate or attempted to delay or obstruct an investigation, or has information that fraudulent, willful or abusive practices may have been used, or that willful misrepresentations may have occurred, the Director of BHSF and the Director of Program Integrity may initiate the withholding of payments to a provider for the purpose of protecting the interest and fiscal integrity of the Louisiana Medicaid program.

B. Basis for Withholding. The Director of BHSF and the Director of Program Integrity may withhold a portion of or all payments or reimbursements to be made to a provider upon

receipt of information that overpayments have been made to a provider, that the provider or provider-in-fact has failed to cooperate or attempted to delay or obstruct an investigation (a request for a delay in a hearing shall not constitute a failure to cooperate or delay or obstruction of an investigation), that fraudulent, willful or abusive practices may have occurred or that willful misrepresentation has occurred. If the Director of BHSF and the Director of Program Integrity has been informed in writing by a prosecuting authority that a provider or provider-in-fact has been formally charged or indicted for crimes or is being investigated for potential criminal activities which relate to the Louisiana Medicaid Program or one or more of its programs or Medicare, payments to that provider may be withheld. If the Director of BHSF and the Director of Program Integrity has been informed in writing by any governmental agency or authorized agent of a governmental agency that a provider or a provider-in-fact is being investigated by that governmental agency or its authorized agent for billing practices related to any government funded health care program, payment may be withheld. Withholding of payments may occur without first notifying the provider.

C. Notice of Withholding

1. The provider shall be sent written notice of the withholding of payments within five (5) working days of the actual withholding of the first check that is the subject of the withholding. The notice shall set forth in general terms the reason(s) for the action, but need not disclose any specific information concerning any ongoing investigations nor the source of the allegations. The notice must:

- a. state that payments are being withheld;
- b. state that the withholding is for a temporary period and cite the circumstances under which the withholding will be terminated;
- c. specify to which type of Medicaid claims withholding is effective;
- d. inform the provider of its right to submit written documentation for consideration and to whom to submit that documentation.

2. Failure to provide timely notice of the withholding to the provider or provider-in-fact may be grounds for dismissing or overturning the withholding, except in cases involving written notification from outside governmental authorities, abusive practice, willful practices or fraudulent practices.

D. Duration of Withholding

1. All withholding of payment actions under this Subpart will be temporary and will not continue after:

- a. the Director of BHSF and the Director of Program Integrity has determined that insufficient information exists to warrant the withholding of payments;
- b. recoupment or recovery of overpayments has been imposed on the provider;
- c. the provider or provider-in-fact has posted a bond or other security deemed adequate to cover all past and future projected overpayments by the Director of BHSF and the Director of Program Integrity ;
- d. the notice of the results of the informal hearing.

2. In no case shall withholding remain in effect past the issuance of the notice of the results of the informal hearing,

unless the withholding is based on written notification by an outside agency that an active and ongoing criminal investigation is being conducted or that formal criminal charges have been brought. In that case, the withholding may continue for as long as the criminal investigation is active and ongoing or the criminal charges are still pending, unless adequate bond or other security has been posted with BHSF.

E. Amount of the Withholding

1. If the withholding of payment results from projected overpayments which the Director of BHSF and the Director of Program Integrity determines not to be related to fraudulent, willful or abusive practices, obstruction or delay in investigation or based on written notification from an outside agency, then when determining the amount to be withheld, the ability of the provider to continue operations and the needs of the recipient serviced by the provider shall be taken into consideration by the Director of BHSF and the Director of Program Integrity. In the event that a recipient cannot receive needed goods, services or supplies from another source arrangements shall be made to assure that the recipient can receive goods, supplies, and services. The burden is on the provider to demonstrate that absent that providers ability to provide goods, supplies, or services to that recipient, the recipient could not receive needed good, supplies, or services. Such showing must be made at the Informal Hearing.

2. The amount of the withholding shall be determined by the Director of BHSF and the Director of Program Integrity. The provider should be notified of the amount withheld every 60 days from the date of the issuing of the Notice of Withholding until the withholding is terminated or the Results of the Informal Hearing is issued, which ever comes first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4149. Effect of Withholding on the Status of a Provider or Provider-in-Fact with the Medical Assistance Program

Withholding of payments does not, in and of its self, affect the status of a provider or provider-in-fact. During the period of withholding, the provider may continue to provide goods, services, or supplies and continue to submit claims for them, unless the provider has been suspended or excluded from participation. Any and all amounts withheld or bonds or other security posted may be used for recovery, recoupment or arrangements to pay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter H. Arrangements to Repay

§4151. Arrangement to Repay

A. Arrangements to repay may be mutually agreed to or imposed as a sanction on a provider, provider-in-fact or other person. Arrangements to repay identified overpayments,

interest, monetary penalties or costs and expenses should be made through a lump sum single payment within 60 days of reaching or imposing the arrangement to repay. However, an agreement to repay may contain installment terms and conditions. In such cases, the repayment period cannot extend two years from the date the agreement is reached or imposed, except that a longer period may be established by the Secretary or Director of BHSF. In such a case the agreement to repay must be signed by the Secretary or Director of BHSF.

B. All agreements to repay must contain at least:

1. the amount to be repaid;
2. the person(s) responsible for making the repayments;
3. a specific time table for making the repayment;
4. if installment payments are involved, the date upon which each installment payment is to be made; and
5. the security posted to assure that the repayments will be made, and if not made, the method through which the security can be seized and converted by Medicaid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR. 23:

Subchapter I. Corrective Actions

§4153. Corrective Actions Plans

A. The following procedures are established for the purpose of attempting to resolve problems prior to the issuing of a notice of sanction or for resolution during the informal hearing or administrative hearing.

1. Corrective Action Plan-Notification

a. The Director of BHSF and the Director of Program Integrity may at anytime issue a notice of corrective action to a provider or provider-in-fact, agent of the provider, or affiliate of the provider. The provider, provider-in-fact, agent of the provider, or affiliate of the provider shall either comply with the corrective action plan within ten (10) working days of receipt of the corrective action plan or request an informal hearing within that time. The purpose of a Corrective Action Plan is to identify potential problem areas and correct them before they become significant discrepancies, deviations or violations. This is an informal process.

i. The request for an informal hearing must be made in writing.

ii. If the provider, provider-in-fact, agent of the provider, or affiliate of the provider opts to comply, it must do so in writing, signed by the provider, provider-in-fact, agent of the provider, or affiliate of the provider.

b. Corrective action plans are also used to resolve matters at or before the informal hearing or administrative appeal process. When so used they serve the same function as a settlement agreement.

2. Corrective Action Plan-Inclusive Criteria. The corrective action plan must be in writing and contain at least the following:

- a. the nature of the discrepancies or violations;
- b. the corrective action(s) that must be taken;
- c. notification of any action required of the provider, provider-in-fact, agent of the provider, billing agent or affiliate of the provider;

d. notification of the right to an informal hearing on any or all of the corrective actions which the provider, provider-in-fact, agent of the provider, or affiliate of the provider is not willing to comply with within ten (10) working days of the date of receipt of the notice; and

e. the name, address, telephone and facsimile number of the individual to contact in regards to compliance or requesting an informal hearing.

3. Corrective Action Plans-Restrictions. Corrective actions, which may be included in a corrective action plan, are the following:

a. issuing a warning through written notice or consultation;

b. require that the provider, provider-in-fact, agent of the provider, or affiliate receive education and training in the law, regulations, rules, policies, criteria and procedures related to the Medical Assistance Program, including billing practices or programmatic requirements and practices. Such education or training may be at the provider or provider-in-fact's expense.

c. require that the provider receive prior authorization for any or all goods, services, or supplies to be rendered;

d. place the provider's claims on manual review status before payment is made;

e. restrict or remove the provider's privilege to submit bills or claims electronically;

f. impose any restrictions deemed appropriate by the Director of BHSF and the Director of Program Integrity; or

g. any other items mutually agreed to by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person and the Director of BHSF or the Director of Program Integrity, including, but not limited to, one or more of the sanctions listed in this regulation and an agreement to repay.

4. Only restrictions in §4153 a-f above can be imposed on a provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider without their agreement. Any other items included in a corrective action plan must be mutually agreed to among the parties to the corrective action plan.

5. A corrective action plan is effective ten (10) days after receipt of the Corrective Action Plan by the provider, provider-in-fact, agent of the provider, or affiliate of the provider.

6. No right to an informal hearing or administrative appeal can arise from a corrective action plan, unless the corrective action plan violates the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter J. Informal Hearing Procedures and Processes

§4155. The Informal Hearing

A. A provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person who has received notice of a corrective action(s), notice of sanction or

notice of withholding of payment shall be provided with an Informal Hearing if that person makes a written request for an Informal Hearing within fifteen (15) days of receipt of the corrective action plan or notice. The request for an Informal Hearing must be made in writing and sent in accordance with the instruction in the corrective action plan or notice. The time and place for the informal hearing will be set out in the notice of setting of the informal hearing.

B. The informal hearing is designed to provide the opportunity:

1. to provide the provider, provider-in-fact, agent of the provider, billing agent, the affiliate of the provider or other person an opportunity to informally review the situation;

2. for BHSF to offer alternatives based on information presented by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider, or other person, if any; and

3. for the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person to evaluate the necessity for seeking an administrative appeal. During the informal hearing, the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person may be afforded the opportunity to talk with the department's personnel involved in the situation, to review pertinent documents on which the alleged violations are based, to ask questions, to seek clarification, to provide additional information and be represented by counsel or other person. Upon agreement of all parties an informal discussion may be recorded or transcribed.

C. Notice of the Results of the Informal Hearing. Following the informal hearing, BHSF shall inform the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person in writing of the results which could range from canceling, modifying, or upholding the any or all of the violations, sanctions or other actions contained in a corrective action plan, notice of sanction or notice of withholding of payments and the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person's right to an administrative appeal. The notice of the results of the informal hearing must be signed by the Director of BHSF and the Director of Program Integrity.

1. The provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person has the right to request an administrative appeal within thirty (30) days of the mailing of the notice of the results of the informal hearing. At any time prior to the issuance of the written results of the informal hearing, the notice of corrective action or notice of administrative sanction or withholding of payment may be modified.

i. If a finding or reason is dropped from the notice, no additional time will be granted to the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person to prepare for the informal hearing.

ii. If additional reasons or sanctions are added to the notice prior to, during or after the informal hearing, the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person shall be granted an additional ten (10) working days to prepare responses to the

ew reasons or sanctions, unless the ten (10) day period is waived by the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter K. Administrative Appeals

§4157. Administrative Appeal

A. The provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider may seek an administrative appeal from the notice of the results of an informal hearing if the provider, provider-in-fact, agent of the provider, billing agent, or affiliate of the provider has had one or more appealable sanctions imposed upon him or an appealable issue exist related to a corrective action plan imposed in a notice of the results of the informal hearing.

B. The notice of administrative appeal must be adequate as to form and lodged with the Bureau of Appeals within thirty (30) days of the receipt of the notice of the results of the informal hearing. The lodging of a timely and adequate request for an administrative appeal does not effect the imposition of a corrective action plan or a sanction, unless the sanction imposed is exclusion. All sanctions imposed through the notice of the results of the informal hearing are effective upon mailing or faxing of the notice of the results of the informal hearing to the provider, provider-in-fact, agent of the provider, billing agent, affiliate of the provider or other person, except exclusion from participation in the Medical Assistance Program or one or more of its programs.

C. In the case of an exclusion from participation if the Director of BHSF and the Director of Program Integrity determines that allowing that person to participate in the Medicaid Program during the pendency of the administrative appeal process poses a threat to the programmatic or fiscal integrity of the Medicaid Program or poses a potential threat to health, welfare or safety of any recipients, then that person may be suspended from participation in the Medicaid Program during the pendency of the administrative appeal. If the exclusion is mandatory a threat to Medicaid Program or recipients is presumed. This determination shall be made following the Informal Hearing.

D. Failure to lodge a timely and adequate request for an administrative appeal will result in the imposition of any and all sanctions in the notice of the results of the informal hearing or the corrective action plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4159. Right to Administrative Appeal and Review

A. Only the imposing of one or more sanctions can be appealed to the department's Bureau of Appeals.

1. The adversely effected party has the right to challenge the basis for the violation and the sanction imposed.

2. The adversely effected party must state specifically what the basis for the appeal is and what actions are being challenged on appeal.

B. The following actions are not sanctions, even if listed as such in the notice of sanction or notice of the results of the informal hearing, and are not subject to appeal or review by the department's Bureau of Appeals:

1. referral to a state, federal or professional licensing authority.
2. referral to the Louisiana Attorney General's Medicaid Fraud Control Unit or any other authorized law enforcement or prosecutorial authority.
3. referral to governing boards, peer review groups or similar entities.
4. issuing a warning to a provider or provider-in-fact or other person through written notice or consultation.
5. require that the provider, or provider-in-fact, their affiliates and agents receive education and training in laws, regulations, rules, policies, and procedures, including billing.
6. conducting prepayment or post-payment review.
7. place the provider's claims on manual review status before payment is made.
8. require that the provider or provider-in-fact receive prior authorization for any or all goods, services, or supplies under the Louisiana Medicaid program or one or more of its programs.
9. remove or restrict the provider's use of electronic billing.
10. any restrictions imposed as the result of a corrective action plan.
11. any restrictions agreed to by a provider, provider-in-fact, agent of the provider, or affiliate of the provider.
12. any terms or conditions contained in an arrangement to repay which has been agreed to by a provider, provider-in-fact, agent of the provider, or affiliate of the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter L. Rewards for Fraud and Abuse Information

§4160. Tip Rewards

A. The Secretary may approve a reward of ten (10) percent of the actual monies recover from a person, with a maximum reward of two thousand (2,000.00) Dollars, to a person who submits information to the Secretary which results in a recovery under this regulation or the provisions of the Medical Assistance Program Integrity Law.

B. The Secretary shall grant rewards only to the extent monies are appropriated for that purpose from the Medical Assistance Programs Fraud Detection Fund. The approval of a reward is solely at the discretion of the Secretary. In making a determination of a reward, the Secretary shall consider the extent to which the tip information contributed to the investigation and recovery of monies. The person providing the information need not have requested a reward in order to be consider for an award by the Secretary.

C. No reward shall be made to any person if:

1. the information was previously known to the department or criminal investigators;

2. a person planned or participated in the action resulting in the investigation.

3. a person who is, or was at the time of the tip, excluded from participation in the Medical Assistance Program or subject to recovery under this regulation or the Medical Assistance Program Integrity Law.

4. a person who is or was a public employee or public official or person who was or is acting on behalf of the state if the person has or had a duty or obligation to report, investigate, or pursue allegations of wrongdoing or misconduct by health care providers or Medicaid recipients unless that individual has not been employed or had such duties and obligation for a period of two years prior to providing the information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4, R..S. 46:440.2 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Subchapter M. Miscellaneous §4161. Mailing

Mailing refers to the sending of a hard copy via U.S. mail or commercial carrier. Sending via facsimile is also acceptable, so long as a hard copy is mailed. Delivery via hand is also acceptable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4163. Confidentiality

All contents of claim reviews and investigations conducted under this regulation shall remain confidential until a final administrative adjudication is entered. Prior to that, only the parties or their authorized agents and representatives may review the contents of the payment review and investigatory files, unless by law others are specifically authorized to have access to those files. These files may be released to law enforcement agencies, other governmental investigatory agencies, or specific individuals within the department who are authorized by the Director of BHSF and the Director of Program Integrity to have access to such information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4165. Severability Clause

If any provision of this regulation is declared invalid or unenforceable for any reason by any court of this state or federal court of proper venue and jurisdiction, that provision shall not affect the validity of the entire regulation or other provisions thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

§4167. Effect of Promulgation

This regulation, when promulgated, shall supersede any and all other departmental regulations that conflict with the provisions of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, 46:437.4 and 46:437.1-46:440.3 (Medical Assistance Program Integrity Law).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, P. O. Box 91030, Baton Rouge, Louisiana 70821-9030. He is the person responsible for responding to inquiries regarding the proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 28, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, 1201 Capitol Access Road, Baton Rouge, Louisiana. At this time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

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

**RULE TITLE: Surveillance and Utilization Review Systems
(SURS)**

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

This proposed rule will not result in state programmatic costs for SFYs 1999-2000, 2000-2001, and 2001-2002. However, state costs for promulgating this proposed rule as well as the final rule, are \$1,866 and will be incurred in SFY 1999-2000.

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

There will be no federal revenue collections. However, the federal share of printing this proposed rule as well as the final rule is \$1,866.

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

Administrative sanctions will be levied against providers who violate the regulations and rules governing the Medicaid Program. The Tips Program rewards persons who submit information concerning providers of fraud that results in a conviction and subsequent recovery of the over payment. The reward is ten percent (10%) of the money recovered with a maximum of two thousand dollars.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

David W. Hood
Secretary
9904#057

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Targeted Case Management Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a rule in June of 1997 governing the provision of case management services to targeted populations and certain home and community based services waiver groups (*Louisiana Register*, Vol. 23, Number 6). This rule addressed programmatic requirements including general provisions, standards for provider participation, standards for payment, consumer eligibility and reimbursement methodology.

The Department has subsequently determined it is necessary to restructure targeted case management services under the Medicaid Program in order to enhance the quality of services and assure statewide access to services. Section 4118(I) of the "Omnibus Budget Reconciliation Act of 1987" permits the State to limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or chronic mental illness in order to ensure that the case managers are capable of ensuring that such individuals receive needed services. Therefore, the Department has decided to limit the number of case management agencies that may be enrolled to provide services to recipients in the Mentally Retarded/Developmentally Disabled (MR/DD) Waiver Program by means of a selective contract. The participation of case management agencies providing service to other targeted and waiver populations will also be limited contingent on the approval of a 1915(b)(4) waiver by the Health Care Financing Administration (HCFA). In addition, all case management agencies shall be required to incorporate personal outcome measures in the development of comprehensive plans of care and to implement procedures for self-evaluation of the agency. An emergency rule was promulgated effective March 1, 1999 establishing the above provisions for case management services (*Louisiana Register*, Volume 25, Number 2.)

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing repeals the June 20, 1997 rule and adopts the following rule governing the provision of case management services to targeted population groups and certain home and community based services waiver groups. The number of case management agencies that may be enrolled to provide services to recipients in the Mentally Retarded/ Developmentally Disabled (MR/DD) Waiver Program shall be limited to those agencies who have been awarded a contract by the Department. The participation of case management agencies

roviding service to other targeted and waiver populations will also be limited contingent on the approval of a 1915(b)(4) waiver by the Health Care Financing Administration (HCFA). In addition, all case management agencies shall be required to incorporate personal outcome measures in the development of comprehensive plans of care and to implement procedures for self-evaluation of the agency. All case management agencies must comply with the policies contained in this rule and the Medicaid Case Management Services Provider Manual issued March 1, 1999 and all subsequent changes.

I. General Provisions

A. Case Management Agency Responsibilities. Case Management is defined as services provided to individuals to assist them in gaining access to the full range of needed services including medical, social, educational, and other support services. The Department utilizes a broker model of case management in which recipients are referred to other agencies for the specific services they need. These services are determined by individualized planning with the recipient's family, and other persons/professionals deemed appropriate. Services are provided in accordance with a written comprehensive plan of care which includes measurable person-centered outcomes. All Medicaid enrolled case management agencies are required to perform the following core elements of case management services.

1. Case Management Intake. The purpose of intake is to serve as an entry point for case management services and to gather baseline information to determine the recipient's need, appropriateness, eligibility and desire for case management.

2. Case Management Assessment. Assessment is the process of gathering and integrating formal and informal information regarding a recipient's goals, strengths, and needs to assist in the development of a person centered comprehensive plan of care. The purpose of the assessment is to establish a contract between the case manager and recipient for the provision of service. The assessment shall be performed in the recipient's home.

3. Comprehensive Plan of Care Development. The comprehensive plan of care (CPOC) is a written plan based upon assessment data (which may be multidisciplinary), observations and other sources of information which reflect the recipient's needs, capacities and priorities. The purpose of the CPOC is to identify the services required and the resources available to meet these needs.

a. The CPOC must be developed through a collaborative process involving the recipient, family, case manager, other support systems, appropriate professionals and service providers. It shall be developed in the presence of the recipient; therefore, it cannot be completed prior to a meeting with the recipient. The recipient, family, case manager, support system and appropriate professional personnel must be directly involved and agree to assume specific functions and responsibilities.

b. The CPOC must be completed and submitted for approval within 35 calendar days of the referral for case management services.

4. Case Management Linkage. Linkage is the arranging of services agreed upon with the recipient and identified in the

POC. Upon the request of the recipient or responsible party, attempts must be made to meet service needs with informal resources as much as possible.

5. Case Management Follow-Up/Monitoring. Follow-up/monitoring is the mechanism used by the case manager to assure the appropriateness of the CPOC. The purpose of follow-up/monitoring contacts is to determine if the services are being delivered as planned; are effective and adequate to meet the recipient's needs; and whether the recipient is satisfied with the services. Through follow-up/monitoring activity, the case manager not only determines the effectiveness of the CPOC in meeting the recipient's needs, but identifies when changes in the recipient's status necessitate a revision in the CPOC.

6. Case Management Reassessment. Reassessment is the process by which the baseline assessment is reviewed and information is gathered for evaluating and revising the overall CPOC. At least every quarter, a complete review of the CPOC must be performed to assure that the goals and services are appropriate to the recipient's needs as identified in the assessment/reassessment process. A reassessment is also required when a major change occurs in the status of the recipient and/or his family.

7. Case Management Transition/Closure. Discharge from a case management agency must occur when the recipient no longer requires services, desires to terminate services, becomes ineligible for services, or chooses to transfer to another case management agency; provided that the recipient has satisfied the requirements of linkage under Section B below. The closure process must ease the transition to other services or care systems. The agency shall not retaliate in any way against the recipient for terminating services or transferring to another agency for case management services.

8. Maintenance of Records. All agency records must be maintained in an accessible, standardized order and format at the DHH enrolled office site. The agency must have sufficient space, facilities and supplies to ensure effective record keeping.

a. Administrative and recipient records must be maintained in a manner to ensure confidentiality and security against loss, tampering, destruction or unauthorized use.

b. The case management agency must retain its records for the longer of the following time frames:

(1) Five years from the date of the last payment;

or

(2) Until the records are audited and all audit questions are answered.

c. Agency records must be available for review by the appropriate state and federal personnel at all reasonable times.

B. Monitoring Provision. The Department of Health and Hospitals and the Department of Health and Human Services have the authority to monitor and audit all case management agencies in order to determine continued compliance with the rules, regulations, policies, and procedures governing case management services.

C. Agency Caseload Limitations. Under the terms of the contractual agreement, case management agencies have a restriction on the total number of recipients it may serve. In a

egion where there are two agencies providing services, the maximum number of recipients that any one agency may serve is sixty percent (60 percent) of the available recipient population. In a regions where there are three agencies providing services, the maximum number of recipients that any one agency may serve is forty percent (40 percent) of the available recipient population.

D. Recipient Freedom of Choice. Selection of Case Management Agency. Recipients have the right to select the provider of their case management services from among those available agencies enrolled to participate in the Program. Recipients are requested to indicate a first and second choice of a provider from among those available providers in the region. If the recipient fails to respond or fails to indicate a second choice of provider and their first choice is full, the Department will automatically assign them to an available provider. Recipients who are auto-assigned may change once, after 30 days but before 45 days of auto assignment, to an available provider.

Recipients must be linked to a case management agency for a six-month period before they can transfer to another agency unless there is good cause for the transfer. Good cause is determined to exist under the following circumstances: 1) the recipient moves to another DHH Region or 2) there are irreconcilable differences between the agency and the recipient. Approval of good cause shall be made by the DHH Case Management Administrator.

Recipients who are being transitioned from a developmental centers into the MD/DD Waiver Program shall receive their case management services through the Office for Citizens with Developmental Disabilities (OCDD).

Recipients who are under the age of 21 and require ventilator assisted care may receive case management services through the Children's Hospital Ventilator Assisted Care Program.

II. Standards of Participation

A. In order to participate as a case management services provider in the Medicaid Program, an agency must comply with licensure and certification requirements, provider enrollment requirements, the case management manual, and the specific terms of individual contractual agreements.

B. Provider Enrollment Requirements. A separate PE-50 and Disclosure of Ownership form is required for each targeted or waiver population and DHH designated region that the agency plans to serve, as well as for each office site it plans to operate. The agency shall provide services only in the parishes of the DHH administrative region for which approval has been granted. The following enrollment requirements are applicable to all case management agencies, regardless of the targeted or waiver group served and failure to comply with these requirements may result in sanctions and/or recoupment and disenrollment.

To serve the MR/DD waiver recipients the agency must have a contract with Medicaid and comply with the terms of the contract.

1. demonstrate direct experience in successfully serving the target population and have demonstrated knowledge of available community services and methods for accessing them including the following:

a. maintain a current file of community resources available to the target population and have established linkages with those resources;

b. demonstrate knowledge of the eligibility requirements and application procedures for federal, state, and local government assistance programs which are applicable to the target population served;

c. employ a sufficient number of case manager and supervisory staff to comply with the staff coverage, staffing qualifications and maximum caseload size requirements described in Section III.A, B, and D;

2. demonstrate administrative capacity and financial resources to provide all core elements of case management services and ensure effective service delivery in accordance with DHH licensing and programmatic requirements;

3. submit a yearly audit of case management costs only and have no outstanding or unresolved audit disclaimer(s) with DHH;

4. assure that all agency staff is employed in accordance with Internal Revenue Service (IRS) and Department of Labor regulations. The subcontracting of individual case managers and/or supervisors is prohibited. However, those agencies who have been awarded Medicaid contracts for case management services may subcontract with another licensed case management agency for case manager and/or supervisory staff if prior approval has been obtained from the Department;

5. assure that all new staff satisfactorily completes an orientation and training program in the first 90 days of employment. All case managers must attend all training mandated by the Department. Each case manager and supervisor must satisfactorily complete case management related training annually to meet the minimum training requirements;

6. implement and maintain an ongoing quality assurance plan and a self-evaluation plan evidenced by written documentation approved by the Department to determine program compliance and effectiveness;

7. document and maintain recipient records in accordance with federal and state regulations governing confidentiality and licensing requirements;

8. assure the recipient's right to elect to receive or terminate case management services (except for recipients in the MR/DD or Elderly and Disabled Adult Waiver Programs). Assure that each recipient has freedom of choice in the selection of an available case management agency (every six months), a qualified case manager, or other service providers and the right to change providers or case managers; all the above are subject to the recipient's freedom of choice requirements contained in Section I.B. of this rule;

9. assure that the agency and case managers will not provide case management and Medicaid reimbursed direct services to the same recipient(s) unless by an affiliate agency with a separate board of directors;

10. with the recipient's permission, agree to maintain regular contact, share relevant information and coordinate medical services with the recipient's attending physician;

11. demonstrate the capacity to participate in the department's electronic data gathering system(s). All requirements for data submittal must be followed and

articipation is required for all enrolled case management agencies. The software is the property of the department;

12. complete management reports as described in the provider manual.

C. Agencies serving certain specific target groups must meet the following additional participation requirements:

1. Case management agencies serving high risk pregnant women must also demonstrate successful experience with the coordination and/or delivery of services for pregnant women; have a working relationship with a local obstetrical provider and acute care hospital that provides deliveries for 24-hour medical consultation; and have a multidisciplinary team which consists, at a minimum, of the following professionals: physician, primary nurse associate or certified nurse manager, registered nurse, social worker, and nutritionist. The team members must meet the licensure and perinatal experience requirements applicable for services to high-risk pregnant women; and

2. Case managers serving HIV-infected individuals must also satisfactorily complete a one-day training approved by the Department's HIV Program Office.

III. Standards for Payment. In order to be reimbursed by the Medicaid Program, an enrolled provider of targeted or waiver case management service must comply with all of the requirements listed below.

A. Staff Coverage

1. Case management agencies must maintain sufficient staff to serve recipients within the mandated caseload size of 35 with a supervisor to staff ratio of no more than eight case managers per supervisor. All case managers must be employed by the agency at least 40 hours per week and work at least 50 percent of the time during normal business hours (8:00 a.m. to 5:00 p.m., Monday through Friday). Case management supervisors must be full time employees and must be continuously available to case managers by telephone or beeper at all other times when not on site when case management services are being provided. All exceptions to the maximum caseload size or full time employment of staff requirements must be prior authorized by the Bureau. The agency must have a written policy to ensure service coverage for all recipients during the normal absences of case managers and supervisors or prior to the filling of vacated staff positions.

2. The agency must maintain a toll-free telephone number to ensure that recipients have access to case management services 24 hours a day, seven days a week. Recipients must be able to reach an actual person in case of an emergency, not a recording.

B. Staff Qualifications. Each Medicaid-enrolled agency must ensure that all staff providing case management services meet the following qualifications, skills and training requirements prior to assuming any full caseload responsibilities.

1. Education and Experience for Case Managers. All case managers must meet one of the following minimum education and experience qualifications.

a. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling,

or counseling from an accredited college or university and one year of paid experience in a human-service-related field providing direct services or case management services; or

b. a licensed registered nurse with one year of paid experience as a registered nurse in public health or a human-service-related field providing direct services or case management services; or

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

The above-referenced minimum qualifications for case managers are applicable for all targeted and waiver groups. Thirty hours of graduate level course credit in a human-service-related field may be substituted for the one year of required paid experience.

In addition, case managers serving High-Risk Pregnant Women must demonstrate knowledge about perinatal care and meet either one of the qualifications cited above or the following qualification:

d. a registered dietician with one year of paid experience in providing nutrition services to pregnant women.

2. Education and Experience for Case Management Supervisors. All case management supervisors must meet one of the following education and experience requirements. Supervisors of case managers for High-Risk Pregnant Women must demonstrate knowledge about perinatal care in addition to meeting one of these qualifications:

a. a master's degree in social work, psychology, nursing, counseling, rehabilitation counseling, education (with special education certification), occupational therapy, speech therapy or physical therapy from an accredited college or university and two years of paid post-master's degree experience in a human-service related field providing direct services or case management services. One year of this experience must be in providing direct services to the target population served; or

b. a bachelor's degree in social work from a social work program accredited by the Council on Social Work Education and three years of paid post-bachelor's degree experience in a human-service related field providing direct services or case management services. One year of this experience must be in providing direct services to the target population served; or

c. a licensed registered nurse with three years of paid post-licensure experience as a registered nurse in public health or a human service-related field providing direct services or case management services. Two years of this experience must be in providing direct services to the target population served; or

d. a bachelor's degree in a human-service-related field such as psychology, education, rehabilitation counseling, or counseling from an accredited college or university and four years of paid post-bachelor's degree experience in a human service related field providing direct services or case management services. Two years of this experience must be in providing direct services to the target population served.

The above minimum qualifications for case management supervisors are applicable for all targeted and waiver groups.

Thirty hours of graduate level course credit in a human-service-related field may be substituted for one year of the required paid experience.

3. Training. Training for case managers and supervisors must be provided or arranged for by the case management agency at its own expense. Agencies must send the appropriate staff to all training mandated by DHH.

a. Training for New Staff. A minimum of sixteen (16) hours of orientation must be provided to all staff, volunteers, and students within one week of employment. A minimum of eight hours of the orientation training must address the target population including, but not limited to, specific service needs, available resources and other topics. In addition to the required 16 hours of orientation, all new employees who have no documentation of previous training must receive a minimum of 16 hours of training during the first 90 calendar days of employment related to the target population and the skills and techniques needed to provide case management to that population.

b. Annual Training. Case managers and supervisors must satisfactorily complete a minimum of forty (40) hours of case-management related training annually which may include updates on subjects covered in orientation and initial training. The 16 hours of orientation training required for new employees are not included in the annual training requirement of at least 40 hours.

c. Documentation. All training required in a. and b. above must be evidenced by written documentation and provided to the Department upon request.

C. Supervisory Responsibilities. Each case management supervisor shall be responsible for assessing staff performance, reviewing individual cases, providing feedback, and assisting staff to develop problem solving skills using two or more of the following methods:

1. individual, face-to-face sessions with staff;
2. group face-to-face sessions with all case management staff; or
3. sessions in which the supervisor accompanies a case manager to meet with recipients.

IV. Reimbursement. The reimbursement methodology for optional targeted and waiver case management services is a fixed monthly rate for the provision of the core elements of case management services as described in Section I. A. and in acceptance with the terms of contract with the Bureau. The primary objective of case management is the attainment of the personal outcomes identified in the recipient's comprehensive plan of care.

In addition to the provision of the core elements, a minimum of one home visit per quarter is required for all recipients of optional targeted and waiver case management services. The agency shall ensure that more frequent home visits are performed if indicated in the recipient's CPOC. The purpose of the home visit is to assess the effectiveness of support strategies and to assist the individual to address problems, maximize opportunities and/or revise support strategies or personal outcomes if it is determined necessary.

The case management agency shall also be responsible for monitoring service providers quarterly through telephone monitoring, on-site observation of service visits and review of the service providers' records. The agency must also ensure that the service provider and recipient are given a copy of the recipient's most current CPOC and any subsequent updates.

A technical amendment (Public Law 100-617) in 1988 specifies that the Medicaid Program is not required to pay for case management services that are furnished to consumers without charge. This is in keeping with Medicaid's longstanding position as the payer of last resort. With the statutory exceptions of case management services included in the Individualized Education Programs (IEP'S) or Individualized Family Service Plans (IFSP's) and services furnished through Title V public health agencies, reimbursement by Medicaid payment for case management services cannot be made when another third party payer is liable, nor may payments be made for services for which no payment liability is incurred.

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to all inquiries regarding this proposed rule. A public hearing on this proposed rule is scheduled for Friday, May 28, 1999 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Targeted Case Management Services**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated costs or savings to the state as a result of implementation of this proposed rule. However, \$400 will be incurred in SFY 1999 for the state's administrative expense of promulgating this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections. However, \$400 will be incurred in SFY 1999 for the federal share of promulgating this proposed rule and the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The four providers who were not awarded a contract may no longer provide case management services to the MR/DD Waiver recipients. Implementation of this proposed rule has increased access for recipients in those Regions where there were no case management agencies.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of these new programmatic requirements will increase employment of the number of case managers providing services to MR/DD Waiver recipients due to reduction in the ratio of case managers to recipients.

Thomas D. Collins
Director
9904#055

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 69—Year 2000 Exclusions (LAC 37:XIII.Chapter 87)

In accordance with the provisions of LRS 49:950 et seq. the Administrative Procedure Act, the Commissioner of Insurance hereby gives notice of his intent to adopt Regulation 69 governing the use of Year 2000 endorsements by insurers doing business in Louisiana. This regulation will replace the emergency regulation published in the March, 1999 edition of the *Louisiana Register*.

Preamble

It is a given that come January 1, 2000, and perhaps sooner for some systems, computers which have not been made Y2K compliant will read the wrong date. What is not a given is what results may follow from a computer's miscalculation of the year. It may be that very little will happen but, it is more likely that problems will arise, some of which may be severe in nature.

Most losses from Y2K will be economic losses arising from the cost of replacing or upgrading computer systems and embedded chips and the loss of income if there is a system failure which shuts down business operations. The average cost to upgrade software is \$1.00 to \$2.00 per line. Billions will be spent by private industry and government to make their systems Y2K compliant. The expense of becoming Y2K compliant will be compounded by the shortage of trained personnel, especially those who are trained in the older computer languages such as COBOL and FORTRAN.

As a general rule, insurance policies do not cover economic losses. That is, they do not respond to suits in contract, i.e. for breach of warranty and/or failure to perform or for the consequential damages arising from the breach of contract. However, faced with the possibility of a catastrophic event, the industry has developed exclusions to preclude, or at least minimize, the shifting of the economic costs posed by the Year 2000 problem to it. Most of the Y2K exclusions filed by the industry contain very broad language.

The rationale provided by insurers for approval of the Y2K exclusions includes the potential risk that the cost of repairing, upgrading or replacing non-Y2K compliant computer systems, including systems which employ embedded chips, will be shifted to the insurance industry. There is concern that lawsuits which involve first party disputes which are outside of the

scope of coverage provided under liability policies might be recast as "liability" claims. Another area of concern is the possibility that "data and media" may be recategorized as "tangible property" to satisfy the predicate for "property damage" under property and liability policies. And there may be an increase in suits against software vendors and providers under expanded theories of negligence or professional "tradesperson" liability which may trigger coverage where previously none has existed. The industry says that the Y2K endorsements are necessary to clarify that losses arising from the Y2K problem are not covered losses.

Due in large part to the regulatory problems arising from the use of pollution exclusions in underwriting and claimshandling, the LDOI was not inclined to approve the Y2K exclusions. A sub-committee was formed to study the issue. Eventually the decision was made to approve Y2K exclusions, in order to avoid a disruption in the market, but the approval was conditioned upon industry compliance with Bulletin LIRC 98-04 and with this Regulation.

In adopting Regulation 69 the Department is guided by the following principles taken from the Louisiana Insurance Code.

1. "Insurance is a business affected with the public interest and it is the purpose of this code to regulate that business in all its phases." LSA-R.S. 22:2.
2. Insurers owe to their insureds a duty of good faith and fair dealing and have an affirmative duty to insureds and claimants alike to adjust claims fairly. LRS 22:1220.
3. Liability policies are issued for the benefit of injured persons and for the protection of insureds. LSA-R.S. 22:655.
4. The Commissioner is obligated to protect the public and policyholders from the risk of insurer insolvency. LSA-R.S. 22:2 et seq.
5. The Commissioner is charged with the duty of insuring that insurance policies promote the public interest and safety. LSA-R.S. 22:620.

Additional guidance is derived from traditional civilian principles found in the Civil Code. Of particular applicability is the principle that insurance contracts are contracts of adhesion. See Civil Code Article 2056 and the Comments thereunder. See also 15 Civil Law Treatise §3.

It is intended that this regulation be read in conjunction with Bulletin LIRC 98-04. If there are any inconsistencies between Regulation 69 and Bulletin LIRC 98-04, the provisions of the Regulation govern. This regulation does not restrict the authority of the LDOI, and other regulatory action, as warranted, may be taken in accordance with law.

Title 37 INSURANCE

Part XIII. Regulations

Chapter 87. Year 2000 Exclusions

§8701. Authority

This regulation is adopted pursuant to LRS 22:2 which charges the Commissioner of Insurance with the duty to enforce and administer all of the provisions of the Insurance Code, the purpose of which is to regulate the business of insurance in all of its phases in the public interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8703. Purpose

The purpose of this regulation is to set parameters on the use of Y2K exclusions and endorsements in order to protect the public interest and to assure the continued viability of the insurance market in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8705. Scope and Applicability

This regulation applies to all property and casualty insurance companies, including where referenced, reinsurers and the surplus lines insurance industry, engaged in the business of insurance in this state. It also applies to all contracts of insurance delivered or issued for delivery in this state, and covering property or liability risks located in this state or to be performed in Louisiana regardless of where made or delivered. This regulation governs the use of all Y2K exclusions whether issued before, on or after its effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3., R.S. 22:941, R.S. 22:1262 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 25:

§8707. Severability

If any section or provision of this regulation is held invalid, such invalidity shall not affect other sections of provisions which can be given effect without the invalid section or provision, and for this purpose the sections and provisions of this regulation are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8709. Definitions

A. For the purposes of this regulation the following terms shall have the meaning ascribed herein:

Economic Loss—means losses arising out of business transactions.

File and Use—means the filing of forms which may then be used by the insurer without receiving prior approval, subject to the LDOI's right of review and right to disallow continued use of the forms.

LDOI—means the Louisiana Department of Insurance and/or the Commissioner of Insurance.

LIRC—means the Louisiana Insurance Rating Commission.

Y2K—means the year 2000 anno domini.

Y2K Exclusion—means all exclusions and endorsements developed by the insurance industry, including but not limited to the ISO forms, to address coverage issues raised by the Y2K problem whether they are captioned Y2K or use terminology such as *date recognition*, *computer related*, *electronic data*.

Y2K Problem—means the inability of computers and other electronic systems including embedded chips to accurately process, provide and/or receive date data from, into, and between the twentieth and twenty first centuries due to a programming design which causes the system to read "00" as 1900 not 2000. The term *Y2K problem* also includes problems resulting from the leap year calculation, date recognition

problems attributed to the Global Positioning System arising on or after August 22, 1999 and the programming of 9/9/99 to read end of field or to delete data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8711. Forms Approval

Y2K exclusions are hereby exempted from the requirement that they be approved prior to use. Such exclusions may be submitted on a "file and use" basis if the filing complies with §8713 of this regulation. Pending filings must be reviewed by the filer to determine compliance. If the original filing does not comply with this regulation the filing must be corrected and resubmitted. Authorization to issue Y2K exclusions expires on January 1, 2002. This section applies only to insurers required by law to file forms with the Commissioner. This exemption applies only to forms. Rate and rule filings must be made with the LIRC as required by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3 and R.S. 22:620E.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8713. Underwriting Standards

A. Except as provided herein, Y2K exclusions may not be used on a blanket basis. This standard applies to both property and liability coverage. Exclusions should not be used where the insured makes or has made a good faith effort to resolve any Y2K problems on its property or where the insured has demonstrated compliance with Y2K criteria established by the insurer.

1. Personal Lines. Y2K exclusions are not approved for use in personal lines, including homeowner policies, farmowner policies and personal umbrella policies, except for business pursuits coverage. A Y2K exclusion may be used in connection with a personal lines policy's business coverage only if the company can document that there is a realistic risk of exposure which warrants the use of a Y2K exclusion. The underwriting documentation must be maintained in the insured's file for a period of five (5) years from the date of issuance of the exclusion. If a Y2K exclusion is attached to the business pursuits portion of a personal line policy it must provide coverage for ensuing perils otherwise covered by the policy and it must have an exception for on premises bodily injury.

2. Commercial Lines (including but not limited to Commercial Property, Boiler & Machinery, Commercial Auto, General Liability, Professional Liability, Directors & Officers and Business Owners).

a. Property Coverage. ISO's IL 09 35, FP 10 21 and BP 10 04 may be used on a mandatory basis as filed and approved. Y2K exclusions with substantially similar language and which provide coverage for ensuing perils (notwithstanding language in the policy which could be interpreted to the contrary such as "indirectly, concurrently caused, or regardless of other causes") may also be used in the same manner as ISO exclusions. But, because potential Y2K property exposures are definable and measurable hazards a filing which substantially deviates from the ISO exclusions referenced above must justify the conclusion that there is no

impact on premium or specify the premium reduction to be given insureds in exchange for attaching the exclusion.

b. Y2K exclusions which do not contain language stating that ensuing perils are covered may not be used in Louisiana. If approval was granted to a Y2K exclusion in conflict with this provision, the approval is hereby withdrawn.

3. Liability Coverage. Use of Y2K exclusions with liability coverage is strongly discouraged and should be limited to those insureds which have failed to take adequate steps to correct their Y2K problem or which have excessive exposure to outside contamination. "Total" Y2K exclusions, such as ISO's CG 21 60, should be limited to high risk insureds. For other classes, Y2K exclusions which have an exception for bodily injury or which provide for the scheduling of risks and perils, such as ISO's CG 21 63 and CG 21 64, should be used.

a. And, except as provided below, Y2K exclusions may not be used for the following classes of risks: mercantile and restaurants, lodging and habitational, or institutional, such as churches and schools.

b. Y2K exclusions which provide for the scheduling of risks and perils, such as ISO's CG 21 63 and CG 21 64, may be used with a subclasses of the classes stated in the above paragraph if the insurer identifies and justifies the exposure to be excluded or limited in the specific subclass. An insurer attaching a Y2K exclusion to an individual risk within such a subclass must maintain documentation in the underwriting file of each individual risk that identifies and justifies the exposure presented by that particular risk; and, maintain documentation that the insurer has provided loss control information to the insured. This documentation must be maintained in the insured's file for a period of five (5) years from the date of issuance of the exclusion.

B. Surplus Lines. Use of Y2K exclusions by the surplus lines insurance industry should comply with this section. Failure to do so without justification may constitute grounds for removal from the list of approved unauthorized insurers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1262 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8715. Monitoring of Market Conduct

A. Each admitted insurer must file with the LIRC a list identifying the classes it has determined warrant the use of Y2K exclusion. The filing must contain the criteria used in determining that a particular class of business should be included on the list and identify the type of exclusion which it may use with each class. If an insurer issues a "total" Y2K exclusion (such as ISO's CG 21 60) to a risk within the filed classes it must be able to provide documentation upon request which identifies and justifies the exposure presented by that particular risk. If the list filed with the LIRC contains a subclass of any of the following classes, the insurer must still comply with the requirements imposed by §8713: mercantile and restaurants, lodging and habitational, or institutional, such as churches and schools.

B. Any insurer including a surplus lines insurer which denies coverage or issues a reservation of rights letter to an insured based in toto or in part upon a Y2K exclusion in the policy must notify the LDOI. The notice must be provided to the LDOI within fifteen (15) days of the denial of coverage or issuance of the reservation of rights letter. A copy of the denial of coverage letter or reservations of rights letter is sufficient notice.

C. The LDOI will closely monitor the use of Y2K exclusions to make certain that they are not used inappropriately in underwriting or claimshandling, by admitted insurers, the surplus lines insurance industry or reinsurers. Examples of inappropriate activity are: blanket use of Y2K exclusions; failure to individually underwrite except when authorized by this Regulation; denial of claims inconsistent with underwriting standards; canceling or nonrenewing coverage or refusing reinsurance as a general business practice; widespread unavailability of buy back coverage; and, unsupported blanket denial of claims based upon lack of fortuity, or the known risk and/or expected or intended exclusions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2, R.S. 22:3, R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1215, R.S. 22:1262, R.S. 22:1262.1, R.S. 22:1301 and R.S. 22:1404.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8717. Representations and Warranties

No representation or warranty may defeat coverage or be used to deny a claim by an admitted insurer, reinsurer or surplus lines insurer unless the representation or warranty is (a) material (b) false and (c) made with the intent to deceive. Questionnaires used to assess Y2K exposure are subject to this standard. Any denial of coverage on the grounds that an answer in a questionnaire is erroneous or inadequate, in the absence of fraud, will result in disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, R.S. 22:619 and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:

§8719. Notice

A. No policy including a surplus lines insurance policy, may be issued or renewed with a Y2K exclusion unless the insured is provided with a copy of the Y2K Notice prepared by the LDOI. (The text of the notice can be found in §8719.C.)

B. Notice for renewals must be provided not less than sixty (60) days in advance to the insured and the agent of record; however, the requirement imposed by this Subsection is not applicable to surplus lines insurers.

C. Appendix A

1. Below is the Y2K Notice required by §8719. Issuance of this notice is mandatory. However, insurers are not precluded from issuing their own notices in conjunction with this notice.

2. Formatting instructions. The caption must be in large type and in bold. The text of the notice should be formatted as shown below and should be in a font of not less than 12 point type.

IMPORTANT NOTICE FROM (COMPANY) AND THE LOUISIANA
DEPARTMENT OF INSURANCE

PLEASE READ IT!

A NEW ENDORSEMENT HAS BEEN ATTACHED TO YOUR
POLICY. THE NEW ENDORSEMENT DEALS WITH THE "Y2K"
PROBLEM.

USE OF THIS ENDORSEMENT IS GOVERNED BY LOUISIANA
DEPARTMENT OF INSURANCE REGULATION 69.

IF YOU HAVE ANY QUESTIONS ABOUT THE ENDORSEMENT OR
THE REGULATION YOU MAY CONTACT THE LOUISIANA
DEPARTMENT OF INSURANCE AT THE ADDRESS LISTED
BELOW:

COMMISSIONER JAMES H. "JIM" BROWN
LOUISIANA INSURANCE BUILDING
950 NORTH FIFTH STREET
BATON ROUGE, LA 70802

OR BY TELEPHONE
342-5900, 342-0895, OR 342-0896
1-800-259-5300 OR 1-800-359-5301

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2,
R.S. 22:3. and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of
Insurance, Office of the Commissioner, LR 25:

§8721. Exemptions

A. Lines of Coverage. If the commissioner finds that the
application of this regulation unduly hinders the availability of
coverage for a particular line of insurance he may, by written
order, grant an exemption for so long as he deems proper.

B. Individual Insureds. An exemption may be granted upon
written notification to the LDOI by an insurer including a
surplus lines insurer, regarding an individual policyholder
which poses an extraordinary risk due to its failure to take any
steps to remedy its Y2K problem. Documentation that
demonstrates the necessity for the exemption must be
maintained in the insureds file for a period of five (5) years
from the date of issuance of the exclusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2,
R.S. 22:3. and R.S. 22:1262.1.

HISTORICAL NOTE: Promulgated by the Department of
Insurance, Office of the Commissioner, LR 25:

§8723. Penalties for Failure to Comply

Noncompliance with this regulation by any insurer subject
to its provisions may result in the imposition of such penalties
as are authorized by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2,
R.S. 22:3. R.S. 22:1211 et seq., R.S. 22:941, R.S. 22:1115, R.S.
22:1262.1. and R.S. 22:1457.

HISTORICAL NOTE: Promulgated by the Department of
Insurance, Office of the Commissioner, LR 25:

§8725. Effective Date

This regulation shall take effect on July 20, 1999, upon
publication in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3.
HISTORICAL NOTE: Promulgated by the Department of
Insurance, Office of the Commissioner, LR 25:

Interested parties may submit oral or written comments on
the proposed regulation to Noël Wertz, Senior Attorney, Box
94214, Baton Rouge, LA 70804-9214; telephone (225) 342-
4632. The deadline to submit comments is 5:00 p.m., May 14,
1999.

The proposed regulation is scheduled to become effective
July 20, 1999 and will supersede the emergency regulation
adopted in March, 1999.

James H. "Jim" Brown
Commissioner of Insurance

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

RULE TITLE: Regulation 69—Year 2000 Exclusions

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

It is not anticipated that Regulation 69 would result in any
implementation costs or savings to local or state governmental
units; however, if significant market conduct activity arises as a
result of the regulation, the Department of Insurance might be
required to add a market conduct examiner to staff. Data
available at this time are insufficient to determine how much
activity will result from the regulation.

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

Regulation 69 provides for the levy of penalties against
companies and agents that violate the provisions of LSA R.S.
22:2, 22:3, et seq., LRS 22:941, 22:1115, 22:1262.1 and
22:1457.215; however, there are not sufficient data available to
determine the amount of revenue that might be generated as a
result of those penalties.

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

Insurers subject to the regulation will be required to make
additional filings with the Department of Insurance, but
insufficient data are available to determine whether this will
result in added costs for the companies. Insurance buyers will
benefit because the regulation enhances the department's ability
to protect them against market conduct abuses, but we do not
have adequate information at this time to estimate the dollar
amount of that benefit.

IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)

Regulation 69 is not expected to have any impact on
competition and employment.

Craig S. Johnson
Deputy Commissioner
Management and Finance
9904#068

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Labor Office of Workers' Compensation

Workers' Compensation—Hearing Rules

(LAC 40:I.5525, 5529, 5709, 5803, 5807, 5813, 5817, 5819, 5835, 5905, 5953, 5961, 6001-6007, 6101-6105, 6201, 6203, 6301, 6303, 6313, 6505, 6507, and 6617)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Department of Labor, Office of Workers' Compensation, pursuant to authority vested in the Director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedure Act, proposes to enact rules governing the procedure before the workers' compensation court, LAC 40:I, Subpart 2, Chapter 55, Sections 5525 and 5529; Chapter 58, Sections 5813 and 5819; Chapter 59, Sections 5953 and 5961; Chapter 60, Section 6001; Chapter 61, Section 6101; Chapter 62, Section 6203, and Chapter 65, Section 6505; to amend rules governing the procedure before the workers' compensation court, LAC 40:I, Subpart 2, Chapter 57, Section 5709; Chapter 58, Sections 5807, 5817, and 5835; Chapter 59, Section 5905; Chapter 60, Sections 6003 through 6007; Chapter 61, Section 6103; Chapter 62, Section 6201; Chapter 63, Sections 6301, 6303, and 6313; Chapter 65, Section 6507; and Chapter 66, Section 6617, and to repeal LAC 40:I, Subpart 2, Chapter 58, Section 5803, to provide for the procedural rules for the workers' compensation court. The proposed rules which are set forth below enact Chapter 55, Sections 5525 and 5529; Chapter 58, Sections 5813 and 5819; Chapter 59, Sections 5953 and 5961; Chapter 60, Section 6001; Chapter 61, Section 6101 and Chapter 62, Section 6203 and Chapter 65, Section 6505; amends Chapter 57, Section 5709; Chapter 58, Sections 5807, 5817, and 5835; Chapter 59, Section 5905; Chapter 60, Sections 6003 through 6007; Chapter 61, Section 6103; Chapter 62, Section 6201; Chapter 63, Sections 6301, 6303, and 6313; Chapter 65, Section 6507; and Chapter 66, Section 6617 and repeals Chapter 58, Section 5803.

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Hearing Rules

Chapter 55. General Provisions

Subchapter E. Recusation of Judges

§5525. Procedure for Recusal of a Workers' Compensation Judge

Any party to a workers' compensation claim may file a written motion for recusal of the judge to whom the matter is assigned specifying the grounds for recusal. This motion shall be filed prior to trial or hearing unless the party discovers the facts constituting the ground for recusal thereafter. In such case, the motion shall be filed immediately after the facts are discovered, but in no case after judgment. Upon receipt of the motion, the judge shall withdraw without further proceedings and authority and immediately refer the matter to the Chief Judge for appointment of an ad hoc judge for

contradictory hearing on the motion. Such hearing shall be held in an expedited manner and in no event later than fourteen days following filing of the motion.

1. Qualification for appointment as an ad hoc judge shall be governed by the provisions of R.S. 23:1310.1(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

5529. Recusation on Court's Own Motion

A judge or mediator may recuse himself after notifying the chief judge, whether a motion for recusation has been filed by a party or not, in any claim in which a ground for recusation exists prior to a judgment being rendered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:274 (February 1999), amended LR 25:

Chapter 57. Actions

Subchapter B. Settlement

§5709. Joint Petition Settlements

A.1. ...

2. A hearing in open court with all parties present shall be required when one or more parties is not represented by counsel. Appearance by the parties and/or their representative may be waived if all parties are represented by counsel. In special circumstances and in the interest of judicial economy, the judge may allow the unrepresented party to waive his appearance and permit the party to appear by telephone. Appearance by the represented parties and/or their representative may be waived in written form.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:268 (February 1999), amended LR 25:

Chapter 58. Pleadings

Subchapter A. General

§5803. Reserved.

Subchapter B. Supplemental/Amended Pleadings

§5807. Supplemental Pleadings

The judge, on motion of a party, may permit the moving party to file a supplemental claim or answer setting forth causes of action or defenses which have become known since the date of filing the original claim or answer, and which are related to or connected with the claim or defenses asserted. If unopposed, the moving party shall certify to the court that he has spoken to opposing counsel and that no opposition exists. If opposed, a motion and order shall be presented to the judge and the motion shall be heard in a contradictory hearing unless waived upon joint motion of the parties. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

AUTHORITY NOTE: Promulgated in accordance with R. S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:269 (February 1999), amended LR 25:

Subchapter D. Mediation

§5813. Informal Mediation

A. Within 15 days of receipt of a claim in a district of proper venue but with not less than 5 days notice to the parties, unless the parties agree to meet at an earlier date, the district office shall set the matter for an informal mediation conference with a mediator. The notice may be given by telephone, but shall be confirmed by United States Mail. The notice shall indicate the date, time, and place of the conference. Upon filing of the LDOL-WC-1008 any party to the claim and/or their representative may request a copy of the Form 1008 filed in the case. No such request shall be denied by an employee of the Office of Workers' Compensation Administration.

B. The purpose of the informal mediation conference shall be to mediate and encourage resolution of the dispute. As such the conference is designed for employees, employers and/or adjustors or claims managers. Within 24 hours of receipt of notice of the informal mediation conference, the employer shall notify his workers' compensation insurer or adjuster, in case of a self-insured, of the date, time and place of the conference.

C. At the discretion of the mediator the informal mediation conference may be held by telephone if agreed to by all parties to the claim. Requests for a telephone mediation shall be submitted to the mediator prior to the mediation stating that all parties agree to the telephone mediation.

D. If available, the parties shall bring or mail to the office prior to the conference two (2) legible copies of the following:

1. LDOL-WC-Form 1007;
2. current medical bills and reports;
3. information on workers' compensation benefits previously paid and wage information.

NOTE: If the employer has failed to timely file a completed 1007, the employer shall be assessed a fine in accordance with LAC 40:109. Nothing contained in the Form LDOL-WC-1007 shall be considered as an admission of any fact contained therein.

E. No stenographic report shall be taken at the informal mediation conference and no witnesses shall be called. All statements made at the mediation conference shall be privileged and shall not be admissible in any subsequent hearing or trial.

F. Continuances of the mediation conference shall be permitted for good cause shown by written request to the mediator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

§5817. Conclusion of Informal Mediation Conference

A. - B. ...

C. Following a mediation conference, at which agreement is reached on all issues in dispute, a report embodying the agreement shall be issued to the parties and the judge within five (5) days thereof. The report may require dismissal of the claim or the filing of an LDOL Form 1011 within a specified period of time. Failure to timely comply with the agreement will result in issuance of citations to all defendants. When all issues in dispute are resolved at any mediation conference, the

Office of Workers' Compensation Administration may waive payment of the \$30.00 filing fee.

D. If any proper party defendant is present or represented at the informal mediation conference, formal citation and service of process shall be made upon that defendant or its representative at that time. If the defendant(s) is participating by telephone, service shall be made by certified mail. The original document(s) shall be mailed to the defendant(s) no later than five days following the completion of the mediation. Citation and service of process shall be proper upon any representative of the defendant appearing at the mediation conference. The affidavit of the mediator or waiver of service signed by the defendant or its authorized representative in any subsequent proceeding shall be prima facie evidence that service has been made in accordance with this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:269 (February 1999), amended LR 25:

§5819. Failure to Attend; Sanctions

A. If any party fails to appear at an informal mediation conference after proper notice, the judge, upon report from the mediator, may fine the delinquent party an amount not to exceed \$500.00, which shall be payable to the Office of Workers' Compensation Administrative Fund. In addition, the judge may assess against the party failing to attend, costs and reasonable attorney's fees incurred by any other party in connection with the conference. If the claimant fails to appear after proper notice, the judge may dismiss the claimant's case without prejudice. The penalties provided for in this Section shall be assessed by the judge only after a contradictory hearing which shall be held prior to the hearing on the merits of the dispute unless waived upon joint motion of the parties. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

B. When a party without reasonable excuse, fails to appear for the mediation conference; the judge may apply to the District Court as set forth in §5535 for contempt proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Subchapter G. Motions

§5835. Ex Parte and Contradictory Motions; Rule to Show Cause Favored

A. ...

B. If the order applied for by written motion is one to which the mover is not clearly entitled or which requires supporting proof, the motion shall be served on and tried contradictorily with the adverse party unless waived upon joint motion of the parties. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating. The rule to show cause is a contradictory motion.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:271 (February 1999), amended LR 25:

Chapter 59. Production of Evidence

Subchapter A. General

§5905. Protective Orders

Upon motion by a party or by a person from whom discovery is sought, and for good cause shown after contradictory hearing, the judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. The judge may entertain such motion by telephone conference with all necessary parties participating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:272 (February 1999), amended LR 25:

Subchapter I. Medical Examinations

§5953. Right of an Employee to Written Report of Medical Examination

Entitlement of an employee to the written report of a medical examination shall be as provided in R.S. 23:1125.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Subchapter K. Sanctions

§5961. Refusal to Obey Subpoena

When a person who, without reasonable excuse, fails to obey a subpoena, the judge may apply to the judge of the appropriate district court as set forth in §5535 for contempt proceedings against such person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:276 (February 1999), amended LR 25:

Chapter 60. Pretrial Procedure

§6001. Status Conference

A. Within sixty days following receipt of the answer a judge shall conduct a status conference for the purpose of setting pre-trial deadlines. Such conference may be held by telephone and may be converted into a pre-trial conference if all parties agree and if stipulated to by all parties in the status conference statement.

B. Issues to be considered and determined at the status conference shall include:

1. the necessity or desirability of amendments to pleadings;
2. discovery anticipated by the parties;
3. deadlines for amendments to pleadings; completion of discovery and scheduling of pre-trial motions;
4. scheduling of the pre-trial conference;
5. scheduling of the trial;
6. such other matters as may aid in the disposition of the action.

C. At the conclusion of the status conference and no longer than fourteen days following the status conference, a

scheduling order, developed by the director, shall be issued by the judge setting forth the actions taken and deadlines set at the conference. Such order shall control the subsequent course of the claim, unless modified to prevent manifest injustice upon motion of a party and after contradictory hearing. A hearing shall not be required if the amendments to the scheduling order are agreed to by all parties to the claim.

D. If a party or his attorney fails to obey the scheduling order, or to appear at the status conference, or is substantially unprepared to participate in the conference or fails to participate in good faith, the judge on his own motion or on the motion of a party, after contradictory hearing, may make an application for contempt proceedings as set forth in §5535.

E. If the status conference is converted to a pre-trial conference, the provisions of §6005 shall apply. The judge in his discretion may waive the requirement of an additional pre-trial conference. If so waived, the provisions of §6007 shall be complied with following the conclusion of the status conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

§6003. Status Conference Statement

A. The parties to the dispute shall file a joint status conference statement with the appropriate district office ten (10) days prior to the scheduled status conference.

B. The status conference statement shall be signed by the party, its representative, or counsel preparing it and shall set forth:

1. - 3. ...
4. a list and brief description of all exhibits to be offered into evidence at trial. Exhibits to be used for impeachment or rebuttal need not be included on the list. Impeachment evidence shall include, but not be limited to, witnesses, documents, photographs, or films. Proposed stipulations as to exhibit authenticity and/or admissibility shall be noted on the exhibit list. Medical reports should be prefaced by a table of contents identifying reports and records by author and date should be arranged in chronological order;
5. ...
6. outstanding discovery;
7. prospects for settlement, if any explored;
8. estimated length of hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:276 (February 1999), amended LR 25:

§6005. Pretrial Conference

A. ...

B. The parties to the dispute shall file a joint pre-trial order with the appropriate district office ten (10) days prior to the scheduled pretrial conference. The joint pre-trial order shall update and finalize all items originally submitted in the status conference statement pursuant to §6003.

C. The party or counsel who prepared and submitted the joint pre-trial order to the workers' compensation court should attend the pretrial conference. Any substitute permitted by the court to attend the conference shall be knowledgeable of all

aspects of the case and shall possess the necessary authority to commit his client or associate regarding changes, stipulations, compromise/settlements, and trial dates.

D. Unless circumstances beyond the control of the parties and/or the court exist, the trial date selected for the case should be 60 days from the date of the pretrial conference.

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:

§6007. Pre-Trial Order

A. At the conclusion of the pretrial conference, the judge shall set the case for trial and shall sign the pre-trial order which shall be filed in the suit record and mailed to all parties at the same time and in the same manner.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:

Chapter 61. Hearings

Subchapter A. Expedited Hearings

§6101. Examination of an Injured Employee

The examination of an injured employee shall be governed by R.S. 23:1121 and 1124.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Subchapter B. Continuance

§6103. General

A.1. Every contested motion for a continuance shall be tried summarily and contradictorily with the opposite party in open court unless waived upon joint motion by the parties to the claim. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

2. If uncontested, the moving party shall certify to the court that he has spoken to opposing counsel, that no opposition exists and that all witnesses have been timely notified of the continuance.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:

§6105. Form Required

Any request for a continuance shall be in written form and may be filed at any time prior to the scheduled trial date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:277 (February 1999), amended LR 25:

Chapter 62. Trial

Subchapter A. Trial Procedure

§6201. General

Only those issues listed in the pretrial order issued by the judge shall be litigated at trial. No new issues shall be raised except by written order of the judge for good cause shown after contradictory hearing or upon joint waiver of the hearing by the parties to the claim. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:278 (February 1999), amended LR 25:

§6203. Trial on the Merits

The trial of a workers' compensation claim shall be governed by R.S. 23:1317.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Chapter 63. Judgments

Subchapter A. General

§6301. Submission of Evidence

A. ...

B. If a transcript of the testimony is ordered by the judge, it shall be filed within fifteen days by the court reporter unless for good cause shown. The case or matter shall not be considered as fully submitted until the court reporter files the transcript.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:279 (February 1999), amended LR 25:

§6303. Completion of Trial; Pronouncement of Judgment

A. The procedures for completion of trial and pronouncement of judgement shall be governed by R.S. 23:1310.5(A)(1) and 1201.3(A). All such orders, decisions, or awards shall be rendered no later than thirty calendar days after conclusion of trial.

B. A written decision shall only be rendered if requested in written form by any party to the claim within ten days of the signing of the judgment. The written decision shall be issued by the judge not later than thirty days following the request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:279 (February 1999), amended LR 25:

Subchapter C. Modification

§6313. Amendment of Judgment

A. A final judgment may be amended by the judge on its own motion or on motion of any party:

1. to alter the phraseology of the judgment, but not the substance; or

2. to correct errors of calculation.

B.1 If the motion is unopposed, the motion may be signed in chambers.

2. If the motion is opposed, it shall be heard in a contradictory hearing unless waived upon joint motion of the parties to the claim. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:279 (February 1999), amended LR 25:

Chapter 65. Special Disputes

Subchapter A. Attorney Fees

§6505. Attorney Fees; Conduct of Parties

A. Claims for attorney fees pursuant to R.S. 23:1125, 1201, 1201.2, 1208, or any other provision of law granting the court authority to award fees due to the conduct of a party, shall be accompanied by an affidavit in support of the fees requested. Such affidavit shall be filed after the court has rendered judgment or as an attachment to post-trial briefs if permitted and will be considered as a rule to set costs and fees. The affidavit shall set forth:

1. the date the attorney was retained;
2. any comments as to the novelty or difficulty of the case and issues;
3. any other information pertinent to the fees to be awarded; including, but not limited to, experience of the attorney, problems encountered, coordination of claims and benefit issues, etc.

B. Upon receipt of the affidavit, the judge shall fix a proposed fee and shall cause notice of the proposed fee to be served on all parties at the same time and in the same manner. Any party may object to any application for attorney fees by filing a motion in opposition to the fee request along with reasonable grounds to oppose the attorney's fee claim within five calendar days after receipt of the application. A contradictory hearing may be held at which time additional testimony and argument may be presented by the disputing parties if requested in the motion in opposition. Within ten days of the submission of all evidence, a judgment shall be rendered determining the attorney fee.

C. Nothing contained herein shall preclude the judge from assessing a reasonable penalty for actions found to be arbitrary, capricious, and without probable cause.

D. Awards, judgments or orders of attorney fees shall be filed into the record and a certified copy provided to the attorney requesting the fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:

Subchapter B. Social Security Offset

§6507. Social Security Offset

A. A request for offsets pursuant to R.S. 23:1225 made in connection with a disputed claim shall be made by filing Form

LDOL-WC-1008 or by responsive pleading. An order shall be issued recognizing the entitlement to the offset for social security benefits from the date of judicial demand, and setting the amount of the offset after a determination of the character of the disability, the right to the offset, and calculation of the offset. A contradictory hearing may be set by the judge for this determination. Notice shall be provided to the claimant or his representative prior to issuance of the order.

B. A request for offsets pursuant to R.S. 23:1225 made in connection with a claim not in dispute may be made by motion on form LDOL-WC-1005(A) or by letter, filed in the appropriate district office. When properly filed, the motion or letter requesting an offset may be granted ex parte from date of filing. No fee shall be charged in connection with a request made under this Subsection.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:281 (February 1999), amended LR 25:

Chapter 66. Miscellaneous

Subchapter C. Waiver of Costs for Indigent Party

§6617. Affidavits of Poverty; Documentation; Order

A.1. - 2. ...

B. When the application and supporting affidavits are presented to the court, it shall inquire into the facts, and if satisfied that the party is entitled to the privilege granted by §6613 it shall render an order permitting the party to proceed, or to continue the claim without paying the costs in advance, or as they accrue, or furnishing security therefor. The submission by the party of supporting documentation that the party is receiving public assistance benefits or that the party's income is less than or equal to one hundred twenty-five percent of the federal poverty level shall create a rebuttable presumption that the party is entitled to the privilege granted by §6613. The court may reconsider such an order on its own motion at any time in a contradictory hearing with all parties present unless waived upon joint motion of the parties. Appearance by the parties and/or their representative may be waived in written form. The judge may entertain such motion by telephone conference with all parties participating.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:282 (February 1999), amended LR 25:

Inquiries concerning the proposed enactment may be directed to: Dan Boudreaux, Assistant Secretary, Office of Workers' Compensation Administration, Louisiana Department of Labor, P.O. Box 94094, Baton Rouge, Louisiana 70804-9094.

Interested persons may submit data, views, arguments, information or comments on the proposed repeal and enactment in writing, to the Louisiana Department of Labor, P.O. Box 94094, Baton Rouge, Louisiana 70804-9094, Attention: Dan Boudreaux, Assistant Secretary, Office of Workers' Compensation Administration. Written comments

must be submitted and received by the Department within 10 days from the date of this notice. A request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the Department within 20 days of the date of this notice.

Gary Forster
Secretary of Labor

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Workers' Compensation—Hearing Rules**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rules will not result in any implementation costs (or savings) to the state or local governmental units other than those costs directly associated with the publication of these rules. The rules are a recodification of existing procedures and practices, which have not been rewritten since 1990; and will allow for a set of complete and consistent procedures for use by all offices. There is no anticipated impact on local governmental units before the Hearings Section for resolution of disputed workers' compensation claims.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no direct 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 cost or economic benefits to directly affected persons or nongovernmental groups. This is simply a recodification of the existing procedures and practices.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
The proposed rule(s) should not affect compensation among the participants in the workers' compensation system. However, a more accountable and accessible resolution process for disputed workers' compensation claims would create a more productive and cost effective workplace, whether public or private for the increased safety of employees throughout the state.

Gary Forster
Secretary of Labor
9904#032

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

Public Information Program and Media Access
(LAC 22:I.337)

In accordance with the Administrative Procedure Act La. R.S. 49:953(B), the Department of Public Safety and Corrections, Corrections Services hereby gives notice of intent to adopt regulations dealing with the Public Information Program and Media Access.

**Title 22
CORRECTIONS, CRIMINAL JUSTICE AND
LAW ENFORCEMENT
Part I. Corrections**

Chapter 3. General

§337. Public Information Program and Media Access

A. Purpose. To state the Secretary's policy regarding methods that will be used within the Department to maintain informative relationships with the public, the media and other agencies.

B. Applicability. Undersecretary, Assistant Secretaries, all Wardens, the Director of Probation and Parole, the Director of Youth Services, and the Director of Prison Enterprises. Each Unit Head shall develop procedures to facilitate interaction with the public, the media, and other agencies and shall ensure that necessary information and instructions are furnished to affected employees and inmates.

C. Policy. It is the Secretary's policy to maintain positive, informative relationships with the public, the media and other agencies, consistent with the security and privacy interests of the Department, its staff, and inmates. All legitimate news media organizations shall be allowed reasonable access to the state's correctional facilities unless security considerations dictate otherwise.

D. Definitions. For the purpose of this regulation, the following definitions shall apply.

Commercial Productions—freelance photographers, writers and film makers who intend to sell their work product for profit to other companies. A tabloid is also considered a commercial production.

News Media—properly credentialed and identifiable news coverage organizations. This includes representatives of general circulation newspapers, legitimate periodical magazines of national circulation sold through newsstands and/or mail subscriptions to the general public, local/national/international news services, and radio/television stations holding a Federal Communications Commission license.

Tabloid—a newspaper of small format giving the news in condensed form, usually with illustrated, often sensational material.

Unit Head—refers to the head of an operational unit, such as Wardens, the Director of Probation and Parole, the Director of Youth Services, or the Director of Prison Enterprises.

E. Media Procedures

1. Unit procedures should address emergency and non-emergency responses to the news media and include, at a minimum, the following:

- a. the identification of areas in the facility that are accessible to news media representatives;
- b. the contact person for routine requests for information;
- c. identification of data and information protected by federal or state privacy laws, or federal and state freedom of information laws;
- d. special events coverage;
- e. news release policy;

f. the designation of staff authorized to speak with the news media.

2. All media interested in making inquiries, conducting interviews, or seeking approval to visit a correctional facility shall first contact the Unit Head or his media relations designee. All requests must be approved by the Unit Head or his designee and requests must be made within a reasonable time frame, considering the scope of the story and the unit's ability to adequately prepare for the visit. The Unit Head will give notice to the Secretary and appropriate Assistant Secretary of any significant or potentially controversial event.

3. All media visitors will be provided with an escorting staff member for the duration of the visit.

4. Only those persons authorized by the Secretary or Unit Head shall release information to the media regarding official matters. Authorized spokespersons shall be knowledgeable of issues and Departmental policy and shall ensure the accuracy of information before releasing it.

5. In the event of an institutional emergency, all public and media access to the institution may be limited. The Warden or his media relations designee will periodically brief all media on the situation. A media briefing center may be established at a remote location.

6. All on-site media contacts with inmates are at the sole discretion of the Unit Head.

7. Written permission should be obtained from an inmate prior to interviewing, photographing, and/or audio or video recording of the inmate. With reference to juvenile inmates, written permission must be obtained from the juvenile's parent, guardian, or attorney, (except when the juvenile is not identifiable). Death Row inmates must also have their attorney's written approval prior to an interview, photograph, and/or audio or video recording. No remuneration will be provided to any inmate.

8. Interviews with inmates housed in maximum custody areas for behavioral problems and/or poor conduct records are discouraged.

9. Access to inmates should also be restricted or disallowed to prevent them from profiting from their crimes, either materially or through enhanced status as a result of media coverage.

F. Procedures for Commercial Productions

1. All commercial productions are required to make a written request to the Unit Head for access. Written requests will include, at a minimum, the following basic information, as applicable:

- a. name, job title and employer of person requesting visit, (if free-lance—who they represent);
- b. topic of story, where it will be used, what purpose;
- c. name of individual(s) to be interviewed;
- d. date and time of arrival, anticipated duration;
- e. name of all persons accompanying requestor;
- f. if applicable, a hold harmless clause: "I recognize a visit to a correctional facility may present certain risks/hazards. I agree to assume all ordinary and/or usual risks to my personal safety inherent in a visit to an institution of this type."

2. All commercial productions are required to read, understand and sign a Location Agreement Form upon their arrival at the unit. The Location Agreement will specifically outline the scope of the work to be performed. The Unit Head (or designee) may require review of the material prior to distribution solely to insure that it comports with the Location Agreement Form. Any material found to be in violation may be restricted or forfeited prior to leaving the grounds, and any effort to publish or distribute the material could subject the author/producer to civil liability.

G. Public Information Procedures

1. All staff shall be responsive to inquiries from the public and local, state and federal agencies by providing prompt, complete responses to all correspondence and other requests.

2. Inquiries from legislative and executive bodies may be referred to authorized staff as designated by the Secretary or Unit Head.

H. Location Agreement Form

I, _____, am aware and agree that upon my entrance to the grounds of _____, I have been authorized by the Unit Head to interview, photograph, and/or audio or video record specific material as follows:

I understand that inmates and visitors have the right not to be interviewed, photographed, and/or audio or video recorded. A release must be signed by inmates and visitors who agree to be interviewed, photographed, and/or audio or video recorded.

I also understand that I am not authorized to interview, photograph and/or audio or video record outside the above stated parameters for security reasons. Any material found by authorities to be in violation may be restricted or forfeited prior to my leaving the grounds, and any effort to publish or distribute the material could subject me to civil liability.

Name: _____
Signature _____ Print _____

Affiliation: _____

Witnessed on this ____ day of _____,
19____, at _____, LA by:

Witness

Title

I. Inmate Media Release Form

I, _____, an inmate confined at _____, hereby voluntarily agree to be interviewed, photographed, and/or audio or video recorded by _____. I also voluntarily agree to have the interview, photograph, and/or audio or video recording broadcast or published by _____.

I do this of my own free will without coercion, threats of punishment or promise of reward from the Louisiana Department of Public Safety and Corrections and _____, their agents and employees. I hereby relieve and release the Louisiana Department of Public Safety and Corrections and _____, their agents and employees, of any responsibility and/or liability which may occur directly or

indirectly as a result of my participation in, and the subsequent publication and/or broadcast of the interview, photograph, and/or audio or video recording.

Inmate Name & Number
Witnessed on this ____ day of _____,
19____, at _____, LA by:

Witness

Title

J. Visitor Media Release Form

I, _____, a visitor at _____, hereby voluntarily agree to be interviewed, photographed, and/or audio or video recorded by members of _____. I also voluntarily agree to have the interview, photograph, and/or audio or video recording broadcast or published by _____.

I do this of my own free will without coercion, threats of punishment or promise of reward from the Louisiana Department of Public Safety and Corrections and _____, their agents and employees. I hereby relieve and release the Louisiana Department of Public Safety and Corrections and _____, their agents and employees, of any responsibility and/or liability which may occur directly or indirectly as a result of my participation in, and the subsequent publication and/or broadcast of the interview, photograph, and/or audio or video recording.

Visitor's Signature

Witnessed on this ____ day of _____,
19____, at _____, LA by:

Witness

Title

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (504) 342-6741. Comments will be accepted through the close of business at 4:30 p.m. on May 20, 1999.

AUTHORITY NOTE: Promulgated in accordance with American Correctional Association (ACA) Standards 2-CO-1A-25 through 27-1 (Administration of Correctional Agencies) 3-4020 through 3-4022 (Adult Correctional Institutions).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Corrections Services, LR 25:

Richard L. Stalder
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Public Information Program and Media Access

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs associated with the proposed rule.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect in revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no additional costs or benefits directly affecting persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There are no estimated effects on competition and employment.

Bernard E. Boudreaux Robert E. Hosse
Undersecretary General Government Section Director
9904#025 Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

New Dealer Applications and Requirements; Maximum
Cylinder Limit
(LAC 55:IX.105, 107, 181)

In accordance with the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and R.S. 40:1846 relative to the authority of the Liquefied Petroleum Gas Commission to make and enforce reasonable rules and regulations governing the storage, sale, and transportation of liquefied petroleum gases, notice is hereby given that the Commission proposes to amend its rules.

The proposed rule changes will do nine things:

1. will require a formal application for a permit at each location for applicants for Class VI and Class VIII permits;
2. will require Class 6-X permit holders to pay a minimum first year permit fee of \$75 for their first location, plus \$50 for each 2 - 11 locations, plus \$25 for each 12 - infinity locations. For all succeeding years the permit fee shall be .225 of 1 percent of gross annual sales of liquefied petroleum gases of all locations or with a minimum, determined by the computation method used on their first year's permit fee, whichever is greater;
3. will require all DOT specifications cylinders of 100 lbs. propane capacity or less to be filled by weight only. Also this action will provide for three exceptions to this rule;
4. will require DOT specification cylinders of 100 lbs. propane capacity or less not to be refilled, continued in service or transported unless they are properly qualified or requalified if they are in commerce or transportation;
5. will not require DOT specifications cylinders of more than 100 lbs. propane capacity to be qualified or requalified unless they are in commerce and transportation;
6. will require all 4 to 40 lb. propane capacity DOT cylinders fabricated after August 1, 1999 to be equipped with an overfilling prevention device and a fixed maximum liquid level gauge;

7. will require all 4 to 40 lb. propane capacity DOT cylinders to be retrofitted with an overfilling prevention device either when the cylinders are requalified under Louisiana regulations or by April 1, 2002 whichever comes first;

8. will not allow the filling of any 4 to 40 lb. propane capacity DOT specification cylinders after April 1, 2002 unless equipped with an overfilling prevention device;

9. would except lift truck cylinders and cylinders identified and used for welding and cutting gases from the overfilling prevention device requirement.

The proposed rule changes complies with the statutory authority granted the Commission under LRS 40:1846.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Subchapter A. New Dealers

§105. Applications

Any person, firm, or corporation desiring to enter the liquefied petroleum gas business in the state of Louisiana must file formal application with the Liquefied Petroleum Gas Commission. In the case of Class VI and Class VIII a formal application must be filed for each location. Other classes of permits and registrations require only one formal application to be filed. Formal application(s) must be filed for Class I, 90 days, and for Classes II, III, IV, V, VI, VII, VIII and IX, 30 days prior to the date of the commission meeting which the application is to be heard. Application for Classes VI-X, VII-E, and R-1, R-2 registrations have no delay prior to the granting of a permit. These permits will be granted by the office of the Director, upon complying with all Commission requirements, and ratified by the Liquefied Petroleum Gas Commission at the first subsequent Commission meeting. Presence of applicant or his authorized representative is required at the commission meeting when the application is heard, except in the cases of Class VI-X, VII-E, and R-1, R-2 registrations where appearance is waived. In no cases will the applicant's supplier be the authorized representative. Only with special approval of the commission, under extenuating circumstances, will the commission allow the applicant to be represented by another party, other than a principal officer, director, manager, or attorney. The formal application form(s) will be furnished by the commission upon request.

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, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 11:557 (May 1985), LR 24:460 (March 1998), LR 25:

§107. Requirements

A.1. ...

2. Application must have been approved by the Liquefied Petroleum Gas Commission except in the cases of Classes VI-X, VII-E and R-1, R-2 registrations then only after they have been ratified by the Liquefied Petroleum Gas Commission.

3. - 5.b. ...

6. Applicant must have paid a permit fee in the amount of \$75, except for Class VII-E, which shall be \$100, and R-1, R-2 registrations, which shall be \$37.50 and Class VI-X shall be in the amount of \$75 for the first location, plus \$50 for each 2 - 11 locations, plus \$25 for each 12 - infinity locations. For succeeding years the permit fee shall be .2250 of 1 percent of annual gross sales of liquefied petroleum gases with a minimum of \$75, except in the case of Class VI-X which the minimum permit fee shall be \$75 for the first location, plus \$50 for each 2 - 11 locations, plus \$25 for each 12 - infinity locations; or .2250 of 1 percent of annual gross sales of liquefied petroleum gases of all locations whichever is greater. For Classes not selling liquefied petroleum gases in succeeding years the permit fee shall be \$75, except registrations shall be \$37.50 per year.

6.a. - 13. ...

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:

Subchapter I. Adoption of Standards

§181. National Fire Protection Association Pamphlet Numbers 54 and 58

A. - E.7. ...

8. With regard to §4-4.3.1, NFPA 58-1995—The maximum permitted filling limit for any container, where practical, shall be determined by weight. DOT specification cylinders of 100 lbs. propane capacity or less that are in commerce or transportation shall be filled by weight only. Exceptions:

a. DOT cylinders filled from bobtails at customer facilities if equipped for filling by volume and are not transported over the highways of the State of Louisiana. An example would be forklift cylinders filled by bobtails and used on premises and not placed in transportation over the highways of the State of Louisiana.

b. DOT cylinders filled by customers from customer tank facilities, if equipped for filling by volume and are not transported over the highways of the State of Louisiana. An example would be forklift cylinders filled by customers from their tanks and used on their premises and not placed in transportation over the highways.

c. DOT cylinders that are permanently affixed if equipped for filling by volume. An example would be motor fuel tanks or DOT cylinders permanently affixed to recreational vehicles.

9. With regard to §4-4.3.2, NFPA 58-1995—§4-4.3.2.a shall not be applicable in Louisiana. §4-4.3.2.b DOT specification cylinders of 100 lbs. propane capacity or more. (See DOT regulations requiring spot weight checks.)

10. With regard to §2-2.1.4.b, NFPA 58-1995—DOT cylinders of 100 lbs. or less shall not be refilled, continued in service, or transported unless they are properly qualified or

requaified for L. P. Gas service, if they are in commerce or transportation. DOT cylinders of 100 lbs. or more shall not be refilled, continued in service or transported unless they are properly qualified or requaified for L. P. Gas service in accordance with DOT regulations, meaning in commerce and transportation. Qualification or requaification must be in accordance with C-3.2 of Appendix C, NFPA 58-1995.

11. Adding NFPA 58-1998, §2-3.1.5 as a supplement to NFPA 58-1995—In Louisiana all new cylinders from 4 lbs. through 40 lbs. propane capacity fabricated after August 1, 1999 shall be equipped with a listed overfilling prevention device (OPD) and a fixed maximum liquid level gauge. All DOT cylinders now in use must be retrofitted with the overfilling prevention device (OPD) either when the cylinders are requaified under Louisiana regulations or by April 1, 2002. No cylinder shall be filled in Louisiana after April 1, 2002 unless equipped with an overfill prevention device (OPD). Lift truck cylinders and cylinders identified and used for welding and cutting gases are exempt from these provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 20:1404 (December 1994), amended LR 24:470 (March 1998), LR 25:

The commission will hold a public hearing May 27, 1999, 1723 Dallas Drive, Baton Rouge, LA, at 8:30 a.m. in regard to these changes.

Written comments will be accepted through May 20, 1999 and should be sent to Charles M. Fuller at P.O. Box 66209, Baton Rouge, LA 70896. All interested persons will be afforded an opportunity to be heard at the public hearing. A preamble has not been prepared for the intended actions.

Charles M. Fuller
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: New Dealer Applications and Requirements; Maximum Cylinder Limit

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

There will be a small implementation cost to state agency, which will be the cost of publication in the *Louisiana Register*. This cost is estimated to be less than \$100. There will be no implementation cost to any local governmental unit.

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

There will be an estimated increase in revenues to the state regulatory governmental unit in fiscal year 1999-2000 and succeeding fiscal years of \$10,075 per year as a result of the proposed permit fee change. There may be an increase in revenues to the state governmental unit and the local governmental units in the form of additional sales tax revenues as a result of additional expenditures to retrofit some propane cylinders with an overfilling prevention device and the purchase of new cylinders necessary to meet required specifications; however these possible increases cannot be calculated at this time.

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

The affected regulated group will experience an increase in their cost by the same amount as the estimated increase in revenues by the state regulatory governmental unit, which is estimated to be \$10,075 per year in fiscal year 1999-2000 and succeeding fiscal years. There may be an economic loss or cost to the user group or persons who would be required to retrofit to meet the overfill protection device requirements. These total costs cannot be calculated at this time but are estimated to be not more than \$20 per unit retrofitted.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no significant impact or effect on competition and employment because of the proposed actions.

Nancy Van Nortwick
Undersecretary
9904#030

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Rehabilitation Services

Vocational Rehabilitation Policy Manual (LAC 67:VII.Chapter 1)

In accordance with the provisions of R.S. 49:953(B), the Administrative Procedures Act, the Department of Social Services, Louisiana Rehabilitation Services (LRS) is revising its Vocational Rehabilitation Policy Manual. These revisions are being made in order to comply with H.R. 1385, Workforce Investment Act of 1998, Title IV Rehabilitation Act Amendments of 1998. This Notice of Intent supersedes the prior Notice of Intent published on February 20, 1999. Emergency Rulemaking was invoked for §109.J.4.a.(2) and b.(2) and §117.B, and became effective on March 24, 1999. Said emergency rule shall remain in effect for 120 days, or until the effective date of the final rule for the Vocational Rehabilitation Policy Manual, whichever occurs first.

Title 67

SOCIAL SERVICES

Part VII. Rehabilitation Services

Chapter 1. Vocational Rehabilitation Policy Manual

§101. Agency Profile

A. Mission. To assist persons with disabilities in their desire to obtain or maintain employment and/or to achieve independence in their community by providing rehabilitation services and by working cooperatively with business and other community services.

B. Program Administration. Louisiana Rehabilitation Services, hereafter referred to as LRS, will secure appropriate resources and support in administering the various programs under the responsibility of the agency. These programs include, but are not limited to:

1. Vocational Rehabilitation Program;
2. Title VII Part B Independent Living Program;
3. Louisiana Commission for the Deaf;

4. Title VI Supported Employment Program;
5. Randolph-Sheppard Blind Vending Facility Program;
6. Personal Care Attendant Program;
7. Community and Family Support Program;
8. Traumatic Head and Spinal Cord Injury Trust Fund (THSCI)

C. The Manual's Function. This manual sets forth the policies of LRS in carrying out the agency's mission, specifically as this mission relates to the Vocational Rehabilitation Program.

D. Exceptions. The director or designee shall have the sole responsibility for any exceptions to this policy manual.

E. Nondiscrimination. All programs administered by and all services provided by LRS shall be rendered on a nondiscrimination basis without regard to handicap, race, creed, color, sex, religion, age, national origin, duration of residence in Louisiana, or status with regard to public assistance in compliance with all appropriate state and federal laws and regulations to include Title VI of the Civil Rights Act of 1964.

F. Compliance with State Laws, Federal Laws and Regulations, and Departmental Policies and Procedures. Staff shall comply with all state and federal laws, agency and civil service rules and regulations, Title I of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act (ADA) of 1990 (Public Law 101-336).

G. Cost-Effective Service Provision. Services shall be provided in a cost-effective manner.

H. Records

1. A record must be maintained for each applicant/client and shall contain documentation to support a counselor's decision regarding eligibility, Order of Selection, and subsequent decisions to provide, deny, or amend services.

I. Data Collection. Staff shall ensure the provision of client and financial data necessary for the operation of the agency's information and financial system as well as the Blind Registry.

J. Expeditious Service Delivery. All referrals, applications and provision of services will be handled expeditiously and equitably.

K. Client Assistance Program. All programs, including community rehabilitation programs, and projects that provide services to individuals with disabilities under this Act shall advise such individuals, or the parents, family members, guardians, advocates, or authorized representatives of the individuals, of the availability and purposes of the client assistance program, including information on means of seeking assistance under such program.

L. Equal Employment Opportunities

1. LRS will comply with Title VII of the Civil Rights Act of 1964 as amended, and Title V of the Rehabilitation Act of 1973 as amended.

2. In addition, all community rehabilitation programs supported by grants or funding from the Rehabilitation Services Administration, must be operated in compliance with these laws.

M. Affirmative Action Plan. LRS will take affirmative action to ensure that the following will be implemented at all levels of administration: recruit, hire, place, train and promote

in all job classifications without regard to non-merit factors such as race, color, age, religion, sex, national origin, disability or veteran status, except where sex is a bonafide occupational qualification.

N. Comprehensive System of Personnel Development. LRS will provide a comprehensive system of personnel development in accordance with the Rehabilitation Act Amendments of 1998.

O. *Applicant/Client*—For purposes of representation, the term *applicant/client* refers to an individual who has applied for vocational rehabilitation services or in certain cases, a parent, or family member, or guardian, an advocate, or any other authorized representative of the individual.

P. Cooperative Agreements. LRS will use services provided under a cooperative agreement as comparable services and benefits.

Q. Services to American Indians with Disabilities. LRS will provide vocational rehabilitation services to American Indians with disabilities to the same extent that these services are provided to other individuals with disabilities which will include, as appropriate, services traditionally available to Indian tribes on reservations.

R. Misrepresentation, Fraud, Collusion, or Criminal Conduct

1. Individuals who obtain access to the services provided by LRS through means of misrepresentation, fraud, collusion, or criminal conduct shall be held responsible for the return of funds expended by LRS on the individual's behalf. Further, such actions shall result in the closure of the individual's vocational rehabilitation case record. Failure on the individual's part to make reparation of funds to the agency may result in legal action being taken by LRS.

2. In cases in which LRS is in possession of clear evidence of misrepresentation, fraud, collusion, or criminal conduct on the part of the individual for the purpose of obtaining services for which the individual would not otherwise be eligible, the individual's case will be referred to the Department of Social Services, Bureau of General Counsel for consultation and/or investigation. If Department of Social Services, Bureau of General Counsel concurs or determines that the individual has obtained services through misrepresentation, fraud, collusion, or criminal conduct, a certified letter will be directed to the individual by the LRS Counselor demanding payment in full of funds which have been expended by the agency on the individual's behalf. The failure of the individual to comply with the demand for reparation may result in legal action being taken on behalf of LRS.

S. Informed Choice. LRS shall provide information and support services to assist applicants and eligible individuals in exercising informed choice throughout the rehabilitation process, consistent with the following:

1. to inform each applicant and eligible individual through appropriate modes of communication;
2. to assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;
3. to maintain flexible procurement guidelines and methods that facilitate the provision of services;

4. to provide or assist eligible individuals in acquiring information necessary to develop the components of the Individualized Employment Plan.

T. Construction. Nothing in this Policy Manual shall be construed to create an entitlement to any vocational rehabilitation service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 25:

§103. Enabling Legislation

A. The Rehabilitation act Amendments of 1998, as contained in H.R. 1385, Workforce Investment Act of 1998.

B. Code of Federal Regulations. Volume 34, Sections 361, 363, 365, and 370.

C. Louisiana Revised Statutes

1. R.S. 49:664, Section 6B (1)(b) (Legislative Act that created the Department of Health and Hospitals), R.S. 36:477(c) (Legislative Act that created the Department of Social Services).

2. R.S. 46:331-335 mandates that a register be maintained of all persons known to be legally blind in the state. (Louisiana Rehabilitation Services maintains and regularly updates the Blind Registry.)

3. Act 19 of 1988 effected the merger of the Division of Rehabilitation Services with the Division of Blind Services to form Louisiana Rehabilitation Services.

4. Act 109 of 1984, R.S. 39:1595.3, and Act 291 of 1986, R.S. 39:1594(I), enacted and authorized the State Use Law.

5. Act 10 of 1994, R.S. 18:59(I)(2), 61(A)(1), 62(A), 103(A), enacted and authorized to provide for the implementation of the National Voter Registration Act of 1993.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:473 (May 1995), LR 25:

§105. Confidentiality

A. General Statement. All client information is confidential. All personal information in the possession of the state agency shall be used only for purposes directly connected with the administration of the program.

B. Notification to Clients. Individuals asked to supply the agency with information concerning themselves shall be informed of the agency's need to collect confidential information and the policies governing its use, release, and access including:

1. the Consent to Release Case Record Information form contained in case files which must document that individuals have been advised of the confidentiality of information pertinent to their case;

2. the principal purpose for which the agency intends to use or release the requested data;

3. whether the individuals may refuse, or are legally required to supply the requested data;

4. any known consequence arising from not providing the requested information;

5. the identity of other agencies to which information is routinely released.

C. Release of Confidential Information

1. The case file must contain documentation concerning any information released with the individual's written consent. Informed written consent is not needed for the release of personal records to the following:

a. public assistance agencies or programs from which the client has requested services or to which the client is being referred for services under the circumstances for which the client's consent may be presumed;

b. the Louisiana Department of Labor and military services of the United States government;

c. doctors, hospitals, clinics and rehabilitation centers providing services to clients as authorized by Louisiana Rehabilitation Services;

d. schools or training centers, when LRS has authorized the service or is considering authorizing such services, and the information is required for the client's success in the program, for the safety of the client, or is otherwise in the client's best interest.

2.a. Confidential information will be released to an organization or an individual engaged in research, audit, or evaluation only for purposes directly connected with the administration of the state program (including research for the development of new knowledge or techniques which would be useful in the administration of the program).

b. Such information will be released only if the organization or individual furnishes satisfactory assurance that:

i. the information will be used only for the purpose for which it is provided;

ii. that it will not be released to persons not connected with the study under consideration; and

iii. that the final product of the research will not reveal any information that may serve to identify any person about whom information has been obtained through the state agency without written consent of such person and the state agency.

c. Information for research, audit, or evaluation will be issued only on the approval of the director.

d. The client must be advised of these conditions.

6. LRS may also release personal information to protect the individual or others when the individual poses a threat to his/her safety or to the safety of others.

D. Client Access to Data. When requested in writing by the involved individual or an authorized representative, clients or applicants have the right to see and obtain in a timely manner copies of any information that the agency maintains on them, including information in their case files, except:

1. medical and/or psychological information, when the service provider states in writing that disclosure to the individual would be detrimental to the individual's physical or mental health;

2. medical, psychological, or other information which the counselor determines harmful to the individual;

Note: Such information may not be released directly to the individual, but must be released, with the individual's informed consent, to the individual's representative, or a physician or a licensed or certified psychologist.

3. personal information that has been obtained from another agency or organization. Such information may be released only by or under the conditions established by the other agency or organization.

E. Informed Consent. Informed consent means that the individual has signed an authorization to release information and such authorization is as follows:

1. in a language that the individual understands;
2. dated;
3. specific as to the nature of the information which may be released;
4. specifically designates the parties to whom the information may be released;
5. specific as to the purpose(s) for which the released information may be used;
6. specific as to the expiration date of the informed consent which must not exceed one year.

F. Confidentiality—HIV Diagnosis. Each time confidential information is released on applicants or clients who have been diagnosed as HIV positive, a specific informed written consent form must be obtained.

G. Court Orders, Warrants and Subpoenas. Subpoenaed case records and depositions are to be handled in the following manner:

1. with the written informed consent of the client, after compliance with the waiver requirements (signed informed consent of client or guardian), the subpoena will be honored and/or the court will be given full cooperation;
2. without the written informed consent of the client, when an employee is subpoenaed for a deposition or receives any other request for information regarding a client, the employee will:
 - a. inform the regional manager or designee of the request;
 - b. contact the attorney, or other person making the request, and explain the confidentiality of the case record information; and request that such attorney or other person obtain a signed informed consent to release information from the client or guardian;
 - c. inform the regional manager or designee if the above steps do not resolve the situation. In this case, the regional manager or designee will then turn the matter over to the Department of Social Services' legal counsel.
3. when an employee is subpoenaed to testify in court or to present case record information in court concerning a client, the employee is to do the following:
 - a. notify the regional manager or designee;
 - b. honor the subpoena;
 - c. take subpoenaed case record or case material to the place of the hearing at the time and date specified on the subpoena;
 - d. if called upon to testify or to present the case record information, inform the court of the following:

i. that the case record information or testimony is confidential information under the provisions of the 1973 Rehabilitation Act and amendments;

ii. the subpoenaed case record information is in agency possession;

iii. agency personnel will testify and/or release the case record information only if ordered to do so by the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 22:993 (October 1996), repromulgated LR 25:

§107. Applicant/Client Appeal Rights

A. Administrative Review

1. The administrative review is a process which may be used by applicants/clients (or as appropriate the applicant's/client's representative) for a timely resolution of disagreements. However, this process may not be used as a means to delay a fair hearing conducted by an Impartial Hearing Officer. The administrative review will allow the applicant/client an opportunity for a face to face meeting in which a thorough discussion with the regional manager or designee can take place regarding the issue(s) of concern. All administrative reviews render a final decision expeditiously after receipt of the initial written request from the applicant/client.

2. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the administrative review appeal process unless the services being provided under the current Individualized Plan for Employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

3. In order to insure that an applicant/client is afforded the option of availing themselves of the opportunity to appeal agency decisions impacting their vocational rehabilitation case, adequate notification by the counselor must include:

- a. the agency's decision;
- b. the basis for, and effective date of the decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the name and address of the regional manager who should be contacted in order to schedule an administrative review, mediation session, or fair hearing.

Note: All administrative reviews must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

B. Mediation

1. The mediation process will provide the applicant/client, (or as appropriate the applicant's/client's

representative) an opportunity for dispute resolution proceedings which are fair, effective, and expeditious. This process may be used by applicants/clients for a timely resolution of disputed findings of an Administrative Review; or as a direct avenue of appeal bypassing the Administrative Review option, but must occur prior to the Fair Hearing option.

2. The mediation process will also be offered to an applicant/client as an option at the time a formal request for a fair hearing is made. However, this process may not be used as a means to delay or supplant a Fair Hearing conducted by an Impartial Hearing Officer.

3. The mediation process will be conducted by a qualified and Impartial Mediator as expeditiously as possible upon receipt of the initial written request from the applicant/client. A list of qualified Impartial Mediators will be maintained by Louisiana Rehabilitation Services.

4. The mediation process must be entered into voluntarily by all parties. Discussions that occur during the mediation session will be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties involved in the mediation session will be required to sign a confidentiality pledge prior to the commencement of such process. The Impartial Mediator must ensure that if an agreement is reached by the parties in dispute, this agreement is set forth in a written mediation agreement prior to the conclusion of the session. This written agreement is the only information from the mediation session that may be presented at any subsequent due process hearing or civil proceeding.

5. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the Mediation process unless the services being provided under the current Individualized Plan for Employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

6. In order to insure that an applicant/client is afforded the option of availing themselves the opportunity to appeal agency decisions impacting their vocational rehabilitation case, adequate notification by the Counselor and/or Regional Manager must include:

- a. the agency's decision (inclusive of an Administrative Review, if conducted);
- b. the basis for, and effective date of the decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation at the Mediation session or Fair Hearing;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the name and address of the Regional Manager who should be contacted in order to schedule a mediation session or fair hearing.

Note: All mediation sessions must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

C. Fair Hearing

1. The fair hearing is the final level of appeal within Louisiana Rehabilitation Services. Subsequent to a decision being reached as a result of the fair hearing, any further pursuit of the issue by the applicant/client (or, as appropriate, the applicant's/client's representative) must be through the public court system.

2. The fair hearing process may be requested by applicants/clients to appeal disputed findings of an administrative review; at any point after a mediation session; or as a direct avenue of appeal bypassing the administrative review or the mediation process option. The fair hearing will be conducted by an Impartial Hearing Officer after receipt of the initial written request. At the time the fair hearing is requested, the applicant/client shall be offered mediation as an option to resolve a dispute if mediation has not been exercised already.

3. An Impartial Hearing Officer shall be selected on a random basis to hear a particular case by agreement between the Louisiana Rehabilitation Services Director and the applicant/client. This officer shall be selected from among a pool of qualified persons identified jointly by Louisiana Rehabilitation Services and members of the Louisiana Rehabilitation Council. The Impartial Hearing Officer shall provide the decision reached in writing to the applicant/client and to Louisiana Rehabilitation Services as expeditiously as possible.

4. All applicants/clients must be provided adequate notification of appeal rights at the time of application, development of the Individualized Plan for Employment, and upon reduction, suspension, or cessation of vocational rehabilitation services. Services will continue during the fair hearing process unless the services being provided under the current Individualized Plan for employment were obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client.

5. In order to insure that the applicant/client is afforded the option of availing themselves the opportunity to pursue a fair hearing, adequate notification by the counselor and/or Regional Manager must include:

- a. the agency's decision (inclusive of an administrative review and/or mediation agreement, if conducted);
- b. the basis for, and effective date of, that decision;
- c. the specific means for appealing the decision;
- d. the applicant's/client's right to submit additional evidence and information, including the client's right to representation at the fair hearing;
- e. advise the applicant/client of the Client Assistance Program and how they can access the program, including the telephone number; and
- f. the means through which a fair hearing may be requested, including the name and address of the regional manager.

Note: All fair hearings must be conducted in a manner which insures that the proceedings are understood by the applicant/client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:189 (February 1995), LR 25:

§109. Eligibility and Ineligibility

A. Criteria for Eligibility

1. An individual is eligible for vocational rehabilitation services, if the individual:

- a. has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and
- b. requires vocational rehabilitation services to prepare for, secure, retain, or regain employment; and
- c. can benefit in terms of an employment outcome from vocational rehabilitation services.

B. Presumption of Benefit

1. An individual who meets the criteria in §109.A.1.a and b shall be presumed to be an individual who can benefit in terms of an employment outcome from vocational rehabilitation services, unless LRS can demonstrate by clear and convincing evidence that such individual is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services due to the severity of the disability of the individual.

2. In making the demonstration of clear and convincing evidence, LRS shall explore the individual's abilities, capabilities, and capacity to perform in work situations, through the use of trial work experiences, except under limited circumstances when an individual cannot take advantage of such experiences.

a. Such trial work experiences shall be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual or to determine clear and convincing evidence that the individual is incapable of benefitting in terms of an employment outcome from vocational rehabilitation services.

b. Trial work experiences shall also include appropriate supports and training.

C. Presumption of Eligibility

1. An individual who has a disability or who is blind as determined pursuant to Title II or Title XVI of the Social Security Act (42 U.S.C. 401 et. seq. And 1381 et. seq.) shall be:

a. Considered to be an individual with either a significant disability or a most significant disability, such determination to be made by LRS; and

b. Presumed to be eligible for vocational rehabilitation services, provided that the individual intends to achieve an employment outcome.

2. LRS can find an SSDI or an SSI recipient ineligible for vocational rehabilitation services if LRS can demonstrate by clear and convincing evidence through the use of trial work experiences that the severity of the individual's disability prohibits the individual from benefitting from vocational rehabilitation services in terms of an employment outcome.

D. Determinations by Officials of other Agencies

1. To the extent appropriate and consistent with the requirements of this section, LRS will use determinations made by officials of other agencies, particularly Education Officials, regarding whether an individual satisfies one or more factors relating to whether an individual is an individual who has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment.

E. Compliance Provisions

1. Nondiscrimination and Nonexclusion

a. Eligibility decisions must be made without regard to sex, race, age, creed, color or national origin of the individual applying for services.

b. No group of individuals is excluded or found ineligible solely on the basis of type of disability.

c. No upper or lower age limit is established which will, in and of itself, result in a finding of ineligibility for any individual with a disability who otherwise meets the basic eligibility requirements specified in this manual.

d. Louisiana Rehabilitation Services does not impose a residence requirement. Illegal aliens, however, cannot be served. Disabled aliens who have a legal, unexpired work visa, and who otherwise meet the eligibility criteria, can be served.

F. Determination of Ineligibility

1. A determination of ineligibility for vocational rehabilitation services is made:

a. when LRS is in possession of clear and convincing evidence that an individual has no physical and/or mental impairment which constitutes or results in a substantial impediment to employment; or

b. when LRS is in possession of clear and convincing evidence that an individual with a disability does not require vocational rehabilitation services to prepare for, secure, retain, or regain employment; or

c. when LRS is in possession of clear and convincing evidence that an individual is incapable of benefitting from vocational rehabilitation services, including available supported employment services in terms of an employment outcome.

2. If an individual who applies for vocational rehabilitation services is determined (based on the review of existing data and, to the extent necessary, the assessment of activities of a trial work period as described under the Presumption of Benefit) not eligible for services, or if an eligible individual receiving services under an Individualized Plan for Employment (IPE) is determined to be no longer eligible for services, LRS shall:

a. Provide an opportunity for full consultation with the individual or, as appropriate, the individual's representative; and

b. Inform the individual, or as appropriate, the individual's representative, in writing of:

i. The reason(s) for the ineligibility determination; and

ii. An explanation of the means by which the individual may express and seek a remedy for an dissatisfaction with the determination, including the

procedures for review by an impartial hearing officer and the availability of services from the Client Assistance Program; and

iii. A referral to any other agencies or programs from whom the individual may be eligible to receive services, including other components of the statewide workforce investment system.

3. Any ineligibility determination that is based on a finding that the individual is incapable of benefitting in terms of an employment outcome shall be reviewed:

- a. within 12 months; and
- b. annually thereafter, if such a review is requested by the individual or the individual's representative.

G. Use of Existing Information

1. To the maximum extent appropriate and consistent with the requirement of this Section, for purposes of determining eligibility of an individual for vocational rehabilitation services, LRS shall use information that is existing and current (as of the date of the determination of the eligibility), including information available from the individual, programs, and providers, particularly education officials and the Social Security Administration.

H. Time Frame for Making an Eligibility Determination

1. LRS shall determine whether an individual is eligible for vocational rehabilitation services within a reasonable period of time, not to exceed 60 days, after the individual has submitted an application for the services unless:

- a. Exceptional and unforeseen circumstances beyond LRS' control preclude making an eligibility determination within 60 days and the individual agrees to an extension of time; or
- b. LRS is exploring an individual's abilities, capabilities, and capacity to perform in trial work experiences.

I. Individual with a Significant Disability

1. Individuals eligible for vocational rehabilitation services are determined to be significantly disabled if the disabling condition and subsequent functional limitations fall into one of the following three categories:

- a. the individual is a recipient of Social Security Disability Insurance (SSDI); or
- b. the individual is a recipient of Supplemental Security Income (SSI) by reason of blindness or disability (SSI based on age alone does not automatically render an individual significantly disabled); or
- c. the individual is one:
 - i. who has a severe physical or mental impairment which severely limits one or more functional capacities (mobility, motor skills, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and
 - ii. whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time (extended period of time means six months or longer); and
 - iii. who has one or more physical or mental impairments resulting from:
 - (a). amputation;
 - (b). arthritis;
 - (c). autism;

- (d). blindness;
- (e). burn injury;
- (f). cancer;
- (g). cerebral palsy;
- (h). cystic fibrosis;
- (i). deafness;
- (j). head injury;
- (k). heart disease;
- (l). hemiplegia;
- (m). hemophilia;
- (n). respiratory or pulmonary dysfunction;
- (o). mental retardation;
- (p). mental illness;
- (q). multiple sclerosis;
- (r). muscular dystrophy;
- (s). musculoskeletal disorders;
- (t) neurological disorders (including stroke and epilepsy);
- (u). paraplegia, quadriplegia, other spinal cord conditions;
- (v). sickle cell anemia;
- (w). specific learning disability;
- (x). end-stage renal disease; or
- (y). another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations.

J. Order of Selection

1. LRS follows an Order of Selection to ensure that individuals with the most significant disabilities receive priority for vocational rehabilitation services.

2. The following factors shall not be used either in determining the order of selection or in determining the placement category of eligible individuals:

- a. any duration of residency requirement, provided the individual is present in the state;
- b. type of disability;
- c. age, gender, race, color, creed, or national origin;
- d. source of referral;
- e. type of expected employment outcome;
- f. the need for specific services or anticipated cost of services required by an individual; or
- g. the income level of an individual or an individual's family.

3. Prerequisite to Placement in the Order of Selection

a. Assignment to a selection group is made after a determination of both of the following:

- i. eligibility for Vocational Rehabilitation Services; and
- ii. significance of disability.

4. Selection Groups. In accordance with the criteria below, an individual is placed in one of the following:

a. Selection Group I—Most Significantly Disabled. An eligible individual is considered most significantly disabled if all of the following apply:

- i. the individual has one or more physical or mental impairments resulting from any of the following:
 - (a). amputation;
 - (b). arthritis;

- (c). autism;
 - (d). blindness;
 - (e). burn injury;
 - (f). cancer;
 - (g). cerebral palsy;
 - (h). cystic fibrosis;
 - (i). deafness;
 - (j). head injury;
 - (k). heart disease;
 - (l). hemiplegia;
 - (m). hemophilia;
 - (n). respiratory or pulmonary dysfunction;
 - (o). mental retardation;
 - (p). mental illness;
 - (q). multiple sclerosis;
 - (r). muscular dystrophy;
 - (s). musculoskeletal disorders;
 - (t) neurological disorders (including stroke and epilepsy);
 - (u). paraplegia, quadriplegia, other spinal cord conditions;
 - (v). sickle cell anemia;
 - (w). specific learning disability;
 - (x). end-stage renal disease; or
 - (y). another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations; and
- ii. the individual's significant physical or mental impairment seriously limits four or more functional capacity areas; and
 - iii. the individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time;
- b. Selection Group II—Significantly Disabled. An eligible individual is considered significantly disabled if all of the following apply:
- i. an eligible individual has one or more physical or mental impairments resulting from any of the following:
 - (a). amputation;
 - (b). arthritis;
 - (c). autism;
 - (d). blindness;
 - (e). burn injury;
 - (f). cancer;
 - (g). cerebral palsy;
 - (h). cystic fibrosis;
 - (i). deafness;
 - (j). head injury;
 - (k). heart disease;
 - (l). hemiplegia;
 - (m). hemophilia;
 - (n). respiratory or pulmonary dysfunction;
 - (o). mental retardation;
 - (p). mental illness;
 - (q). multiple sclerosis;
 - (r). muscular dystrophy;
 - (s). musculoskeletal disorders;

- (t) neurological disorders (including stroke and epilepsy);
- (u). paraplegia, quadriplegia, other spinal cord conditions;
- (v). sickle cell anemia;
- (w). specific learning disability;
- (x). end-stage renal disease; or
- (y). another impairment or combination of impairments determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitations; and
- ii. the individual's severe physical or mental impairment seriously limits three functional capacity areas; and

iii. the individual's vocational rehabilitation is expected to require multiple vocational rehabilitation services over an extended period of time;

c. Selection Group III—Non-Significantly Disabled. An eligible individual is considered non-significantly disabled if existing functional limitations do not meet the criteria of an individual with either a most significant disability or a significant disability;

d. Public Safety Officers. Priority shall be given in all selection groups to those individuals with disabilities whose disability arose from an impairment sustained in the line of duty while performing as a public safety officer and the immediate cause of that impairment was a criminal act, apparent criminal act, or a hazardous condition resulting from the officer's performance of duties in direct connection with the enforcement, execution, and administration of law or fire prevention, firefighting, or related public safety activities;

e. Functional Capacity Areas. Functional capacity areas are identified as follows:

- i. mobility;
- ii. motor skills;
- iii. communication;
- iv. self-care;
- v. self-direction;
- vi. interpersonal skills;
- vii. work tolerance;
- viii. work skills;

f. Other Considerations

i. individuals shall be placed in the highest priority category for which they are eligible;

ii. upon placement into a priority category, individuals will be notified in writing of their category assignment and of their right to appeal their category assignment.

5. Scope of Services Available. LRS' order of selection shall not limit the scope of services available for eligible individuals within the selection group(s) being served.

6. Information and Referral. LRS will, as appropriate, refer those individuals in selection Groups(s) not being served to other components of the statewide workforce investment system that are best suited to address the specific employment needs of the individual with a disability.

7. Continuity of Services. LRS shall provide for continuity of services once an otherwise eligible individual is

selected for and begins to receive services under an IPE, irrespective of the severity of the individual's disability.

8. Other Assurances

a. All individuals within a higher priority category for services shall be served before individuals in the next lowest priority category.

b. When it is impossible to serve all eligible individuals within a priority category, the individuals (in addition to referral to other components of the statewide workforce investment system) will be placed on a deferred services waiting list. Individuals on the deferred services waiting list will be served in chronological order based on the date of application.

c. If the order of selection is rescinded, individuals on deferred services waiting lists and in unserved categories will be contacted and served in chronological order based on the date of application.

9. Client Participation in the Cost of Services. All LRS policy relative to client participation in the cost of services shall apply to individuals receiving services under the order of selection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 19:891 (September 1991), amended LR 20:317 (March 1994), LR 21:191 (February 1995), LR 22:993 (October 1996), LR 23:994 (August 1997), LR 25:

§110. Information and Referral Services

A. Purpose. The purpose of an expanded system of information and referral is as follows:

1. To ensure that individuals with disabilities who are not being served under LRS' Order of Selection receive accurate vocational rehabilitation information and guidance to assist such individuals in preparing for, securing, retaining, or regaining employment; and

2. To ensure that such individuals, as appropriate, are referred to other federal and state programs, including other components of the statewide workforce investment system.

B. Services

1. Information

a. As appropriate, to the extent that such services are not purchased by LRS, LRS will provide the following informational vocational rehabilitation services:

- i. individualized guidance and counseling;
- ii. individualized vocational exploration;
- iii. supervised job placement referrals;
- iv. assistance in securing reasonable accommodations.

2. Referral

a. As appropriate, LRS will make a referral to the appropriate Federal or State program, including other components of the statewide workforce investment system, that is best suited to address the specific employment needs of the individual with a disability.

b. Information provided by LRS to the individual will contain:

- i. a copy of the notice of the referral by LRS to the other agency carrying out the program; and
- ii. information identifying a specific point of contact within the agency carrying out the program; and

iii. information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 25:

§111. Comprehensive Assessment

A. Purpose

1. To make a determination of the employment-related needs of the individual with a disability.

2. To make a determination of the objectives, nature, and scope of vocational rehabilitation services required for development of the Individualized Plan for Employment (IPE) of an eligible individual.

B. Scope

1. To the extent additional data is necessary, LRS shall conduct a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, of the eligible individual, including the need for supported employment.

2. The comprehensive assessment includes, to the degree needed, an assessment of the following:

- a. personality;
- b. interests;
- c. interpersonal skills;
- d. intelligence and related functional capacities;
- e. educational achievements;
- f. work experience;
- g. vocational aptitudes;
- h. personal and social adjustment;
- i. employment opportunities;
- j. medical, psychiatric, and/or psychological factors;
- k. other pertinent vocational and educational factors;
- l. appraisal of patterns of work behavior;
- m. services needed to acquire occupational skills,

develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment.

C. Additional Considerations

1. The comprehensive assessment is limited to information necessary to identify the rehabilitation needs of the eligible individual and to develop the Individualized Plan for Employment (IPE).

2. LRS will use as a primary source of information, to the maximum extent possible and appropriate, existing information obtained for the purpose of determining eligibility.

3. LRS will use, to the maximum extent possible and appropriate, information provided by the individual and/or the individual's family.

D. Trial Work Periods

1. As appropriate, LRS will use trial work periods to explore an individual's abilities, capabilities, and capacity to perform in work situations.

2. An assessment will be conducted as often as necessary and at least every 90 days.

3. As appropriate, LRS will provide a referral for the

provision of rehabilitation technology services to assess and to develop the capacities of the individual to perform in a work environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 24:

§113. Individualized Plan for Employment (IPE)

A. Purpose of the Individualized Plan for Employment (IPE). The Individualized Plan for Employment, hereafter referred to as IPE, and all subsequent amendments assure that each individual determined eligible for vocational rehabilitation services or determined appropriate for extended evaluation services shall have a formal plan, jointly developed and agreed upon by the individual (or as appropriate the individual's family member or other authorized representative) and the rehabilitation counselor.

B. Client Choice and Client Participation

1. The format of the IPE, to the maximum extent possible, will be in the language or mode of communication understood by the individual. Each individual's IPE will assure that the plan was developed in a manner empowering the individual with the ability to make an informed choice relative to the selection of an employment goal, intermediate objectives, services and service providers.

2. The client (or where appropriate, the client's parent, guardian or other representative) must sign the IPE and must receive a copy of the original IPE and all subsequent amendments.

C. Options for Developing an IPE

1. After completion of the assessment for determining eligibility and vocational rehabilitation needs (comprehensive assessment), LRS shall provide the eligible individual, or the individual's representative, in writing, and in an appropriate mode of communication, with information on the individual's options for developing an IPE including the following:

a. Information on the availability of technical assistance, to the extent determined to be appropriate by the eligible individual, from a qualified vocational rehabilitation counselor in developing all or part of the IPE;

b. A description of the full range of components that shall be included in an IPE;

c. As appropriate, an explanation of agency guidelines and criteria associated with financial commitments concerning an IPE;

d. As appropriate, additional information the eligible individual requests or LRS determines necessary; and

e. As appropriate, information on the availability of assistance in completing designated LRS forms required in developing an IPE.

D. Mandatory Components of an IPE

1. Regardless of the approach selected by an eligible individual to develop an IPE, an IPE shall, at a minimum, contain components consisting of the following:

a. the specific employment goal chosen by the eligible individual, consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the eligible individual resulting in

employment, and to the maximum extent appropriate, in an integrated setting;

b. the specific vocational rehabilitation services (provided in the most integrated setting appropriate for the service and consistent with the individual's informed choice) needed to achieve the employment goal, including as appropriate, the provision of assistive technology devices and assistive technology services, and personal assistance services, including training and management of such services;

c. the approximate dates for the initiation of each service and the anticipated date for the completion of each service;

d. a time frame for the achievement of the employment goal;

e. the entity chosen to provide the vocational rehabilitation service and the methods to procure such services;

f. the criteria to evaluate the individual's progress towards achievement of the employment goal.

g. the terms and conditions of the IPE, including, as appropriate, information describing:

i. responsibilities of LRS;

ii. responsibilities of the eligible individual including those responsibilities the individual will assume in relation to the employment goal;

iii. if applicable, the participation of the eligible individual in paying for the costs of the planned services;

iv. responsibility of the eligible individual with regard to applying for and securing comparable benefits;

v. if applicable, the responsibilities of any other entities as the result of arrangements made pursuant to comparable services and benefits.

h. For an eligible individual with the most significant disabilities for whom an employment goal is in a supported employment setting, information identifying:

i. the extended services needed;

ii. the source of extended services, or to the extent that the source of extended services cannot be identified at the time of development of the IPE, a description of the basis for concluding that there is reasonable expectation that such source will become available.

i. a statement of the projected need for post-employment services.

j. The rights and remedies available to the individual through the Appeal Process and information regarding the availability of the Client Assistance Program.

E. Review and Amendment

1. The IPE shall be reviewed as least annually by a qualified vocational rehabilitation counselor and the eligible individual, or as appropriate, the individual's representative; and

2. Amended, as necessary, by the individual, or as appropriate, the individual's representative, in collaboration with a qualified vocational rehabilitation counselor, (if there are substantive changes in the employment goal; the vocational rehabilitation services to be provided; or the service providers of the services (which amendments shall not take effect until agreed to and signed by the eligible individual, or as appropriate, the individual's representative, and a qualified

vocational rehabilitation counselor employment by LRS).

F. IPE Document

1. An IPE for employment shall be a written document prepared on forms provided by LRS.

2. An IPE shall be developed and implemented in a manner that afford eligible individuals the opportunity to exercise informed choice in selecting an employment outcome, the specific vocational rehabilitation services to be provided under the IPE, the entity that will provide the vocational rehabilitation services, and the methods used to procure the services consistent with Informed Choice as defined in LRS in Chapter 1 of this policy manual.

3. An IPE shall be agreed to, and signed by, such individual or, as appropriate, the individual's representative; and approved and signed by a qualified vocational rehabilitation counselor employed by LRS.

4. A copy of the IPE shall be provided to the individual or, as appropriate, the individual's representative, in writing; and if appropriate, in the native language or mode of communication of the individual.

G. Content of the IPE for Case Closure as "Ineligible"

1. The IPE and amendments relating to case closure based on the decision that the individual is no longer capable of achieving an employment goal, must document with clear and convincing evidence that the individual is incapable of benefitting from vocational rehabilitation services, to include available supported employment services. Such decisions shall be reviewed and reassessed twelve months from the date of closure.

2. IPE closure documents shall set forth the rights and remedies available to the individual through the Appeal Process and provide information regarding the availability of the Client Assistance Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 25:

§115. Financial

A. Comparable Services and Similar Benefits

1. Determination of Availability

a. Prior to providing any vocational rehabilitation service to an eligible individual, except those services specified below in c.i.(a)-(f), LRS will determine whether comparable services and benefits are available under any other program (other than a program carried out under Title IV, Rehabilitation Act Amendments of 1998) unless such a determination would interrupt or delay:

i. the progress of the individual toward achieving the employment outcome identified in the IPE of the individual;

ii. an immediate job placement; or

iii. the provision of such service to any individual at extreme medical risk.

b. Awards and Scholarships. For purposes of the determination of availability in A.1. above, comparable benefits do not include awards and scholarships based on merit.

c. Exceptions to Use of Comparable Services and Benefits

i. The following vocational rehabilitation services can be provided without making a determination of the availability of comparable services and benefits:

(a). services provided through LRS' Information and Referral System;

(b). assessment for determining eligibility and vocational rehabilitation needs, including if appropriate, assessment by personnel skilled in rehabilitation technology;

(c). counseling and guidance, including information an support services to assist an individual in exercising informed choice;

(d). referral and other services needed to secure necessary services from other agencies through cooperative agreements, if such services are not available from LRS;

(e). job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(f). rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

B. Individual's Participation in the Cost of Vocational Rehabilitation Services.

1. LRS will consider, through budgetary analysis of assets, income, monthly liabilities, and comparable services and similar benefits, the financial need of eligible individuals and individuals who are under extended evaluations for purposes of determining the extent of the individual's participation in the costs of certain vocational rehabilitation services.

a. Neither a financial needs test, not a budgetary analysis, is applied and no financial participation is required as a condition for furnishing the following vocational rehabilitation services:

i. assessment for determining eligibility and priority for services, except those non-assessment services that are provided during an extended evaluation to explore the individual's abilities, capabilities, and capacity to perform in work situations (trial work periods);

ii. assessment for determining vocational rehabilitation needs;

iii. counseling, guidance, including information and support services to assist an individual in exercising informed choice;

iv. referral and other services to secure needed services from other agencies through cooperative agreements, if such services are not available from LRS;

v. job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

vi. rehabilitation technology assessments;

vii. vocational and other training services when the training program is related to the achievement of a direct job placement outcome, including supported employment, on-site training, and on-the-job training;

viii. personal assistance services directly related to a direct job placement outcome and provided simultaneously with any of the above-listed vocational rehabilitation services.

(Examples include attendant, reader, scribe, interpreter, and adjustment/orientation and mobility training services.)

b. A financial needs test will be applied through budgetary analysis to determine the ability of the individual to financially contribute to the cost of the following vocational rehabilitation services:

- i. physical restoration and/or mental restoration;
- ii. maintenance;
- iii. transportation;
- iv. books and supplies;
- v. occupational tools and equipment;
- vi. telecommunication, sensory, and other technological aids and devices, including assistive technology devices;
- vii. cost services to other family members;
- viii. occupational licenses;
- ix. discretionary training fees such as car registration fees, student health service fees, etc. not included in tuition;
- x. home modifications for accessibility;
- xi. vehicle modifications/renovations;
- xii. adjustment/orientation and mobility, attendant, reader, scribe, and interpreter services not directly related to a direct job placement outcome;
- xiii. vocational and other training services, such as college/university, vocational and proprietary school training, not related to a direct job placement outcome;
- xiv. other goods and services;
- xv. post-employment services consisting of the services listed above.

c. The only exception to items §115.B.1.b.xii. and xiii is as follows:

i. To preserve LRS' Continuity of Services provision in the Order of Selection, LRS exempted those eligible individuals who had an IWRP/IPE in effect prior to July 20, 1999, which is the date of the adoption of this rule change; therefore, items xii. and xiii. in b. above will only apply to those individuals who had an IWRP/IPE developed after July 20, 1999.

d. The following services are exempt from the application of a budget surplus, if the Counselor determines that a surplus exists:

- i. adjustment/orientation and mobility services;
- ii. attendant services;
- iii. reader services;
- iv. scribe services, notetaker/braille services;
- v. interpreter services;
- vi. assistive technology services.

e. When it is determined by a counselor and an eligible client that self-employment, through establishment of a small business enterprise, is the best option for the client, the client must provide a minimum cash capital contribution of 20 percent of the total transaction. (Refer to LRS Policy on Small Business Enterprise.)

f. An individual's status for the budget analysis will be determined as follows:

i. the agency will perform the budget analysis on the basis of the resources of both the client and the spouse if the client is married;

ii. the agency will perform the budget analysis on the basis of the resources of the family unit for all single clients living in the family home as a family member. Temporary absences from the home, such as for vacations, school, or illness, count as time lived in the home.

iii. the agency will perform the budget analysis on an individual who has returned to the family unit on the basis of the resources of only that individual if the following conditions are met:

(a). the individual's disability has precluded their obtaining or maintaining employment; and

(b). the individual has a documented history of self-sufficiency that includes providing over one-half the costs of maintaining a residence for at least one year prior to their return to the family unit; and

(c). the individual's parent(s), legal guardian, or other head of household provides documentation that indicates such person(s) do not claim the individual as an exemption for federal and/or state income tax purposes.

(d). Family unit is defined as the client and the client's parents or the client and any significant other(s), such as aunts, uncles, friends, legal guardians, etc., who are living in the household and are providing support for the maintenance of the household in which the client lives. Adult siblings of the client can be excluded as a member of the family unit for income reporting; but, must also be excluded from the family unit in the determination of allowable monthly liabilities.

g. Individuals who do not provide LRS with necessary financial information to perform the budget analysis will be eligible only for those vocational rehabilitation services that are not conditioned upon an analysis to determine the extent of the individual's participation in the costs of such services.

h. Individuals who have defaulted on a student loan must make good faith efforts with the lender to clear the default or to defer payment before LRS will participate in the cost of the client's vocational rehabilitation program.

i. Simultaneously with the comprehensive assessment, at the annual review of the IPE, and at any time there is a change in the financial situation of either the client or the family, the counselor will perform a budget analysis for each client requiring vocational rehabilitation services as listed above in §115.B.1.b.i.-xv. The amount of client participation in the cost of their vocational rehabilitation program will be based upon the most recent budget analysis at the time the relevant IPE or amendment is developed.

2. State and Departmental Purchasing Procedures. All applicable state, departmental and agency purchasing policies and procedures must be followed.

a. LRS does not purchase vehicles or real estate.

b. Fee Schedule. Services and rates of payment must be authorized in accordance with LRS' Medical Fee Schedule and LRS' Technical Assistance and Guidance Manual, Section 500 which lists approved service providers.

c. Approval of Service Providers

i. Any service provider approved by the agency must agree not to make any additional charge to or accept any

additional payment from the client or client's family for services authorized by the agency.

ii. Relatives of vocational rehabilitation clients will not be approved as a paid service provider unless such individuals are professionally and occupationally engaged in the delivery of such services by offering their services to the general public on a regular and consistent basis.

d. Prior Written Authorization and Encumbrance

i. Either before or at the same time as the initiation or delivery of goods or services, the agency must be in possession of the proper authorizing document. The only exception is in an emergency situation.

ii. If oral authorization of approved services is made in an emergency situation, there must be prompt documentation, and the authorization must be confirmed in writing and forwarded to the provider of the services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 21:837 (August 1995), LR 25:

§117. Vocational Rehabilitation Services

A. Vocational Rehabilitation Services are any services described in an IPE necessary to assist an individual with a disability in preparing for, securing, retaining, or regaining an employment goal that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including:

1. an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

2. counseling and guidance, including information and support services to assist an individual in exercising informed choice;

3. referral and other services to secure needed services from other agencies through cooperative agreements developed, if such services are not available from LRS;

4. job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

5. vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials, except that no training services provided at an institution of higher education shall be paid for with funds under this Title unless maximum efforts have been made by LRS and the individual to secure grant assistance in whole or in part, from other sources to pay for such training;

6. to the extent that financial support is not readily available from a source other than LRS (such as through health insurance of the individual or a comparable service and benefit consistent with LRS policy, Chapter 115 Financial, Comparable Services and Similar Benefits) diagnosis and treatment of physical and mental impairments, including:

a. corrective surgery or therapeutic treatment necessary to correct or substantially modify a physical or mental condition that constitutes a substantial impediment to employment, but is of such a nature that correction or

modification may reasonably be expected to eliminate or reduce such impediment to employment within a reasonable length of time;

b. necessary hospitalization in connection with surgery or treatment;

c. prosthetic and orthotic devices;

d. eyeglasses and visual services as prescribed by qualified personnel who meet State license laws;

e. special services, artificial kidneys, and supplies necessary for the treatment of individuals with end-stage renal disease; and

f. diagnosis and treatment for mental and emotional disorders by qualified personnel who meet State license laws;

7. maintenance for additional costs incurred while participating in and assessment for determining eligibility and vocational rehabilitation needs or while receiving other services under an IPE and needed by the individual to achieve an employment goal;

8. transportation, including adequate training in the use of public transportation vehicles and systems, that is provided in connection with the provision of any other service under an IPE and needed by the individual to achieve an employment goal;

9. on-the-job or other related personal assistance services provided while an individual is receiving other services under an IPE and needed by the individual to achieve an employment goal;

10. interpreter services provided by qualified personnel for individuals who are deaf or hard of hearing, and reader services for individuals who are determined to be blind, after an examination by qualified personnel who meet State license law;

11. rehabilitation teaching services, and orientation and mobility services for individuals who are blind;

12. occupational licenses, tools, equipment, and initial stocks and supplies;

13. technical assistance and other consultation services to conduct market analyses, develop plans and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment goal;

14. rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

15. transition services for students with disabilities that facilitate the achievement of the employment outcome identified in the IPE;

16. supported employment services;

17. services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome identified in the IPE;

18. specific post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment.

B. Scope of Services for Diagnosis and Treatment of Physical and Mental Impairments

1. LRS will not provide ongoing medical rehabilitation treatment services. After medical science has restored the individual to their maximum level of healthy functioning, LRS

can provide vocational rehabilitation services to remediate residual deficits medical science could not restore, if such impairments impact the individual's ability to work. LRS can provide all necessary and appropriate vocational rehabilitation services if these services address these functional deficits and assist the individual in performing job functions and/or gaining knowledge or skills necessary to compete for and obtain employment.

2. LRS will not provide experimental services or supplies.

C. Scope of Services in Community Rehabilitation Programs (CRP)

1. Cost Effectiveness

a. In consideration of the cost-effective provision of services in Community Rehabilitation Programs, LRS shall first use publicly-supported Community Rehabilitation Programs to provide assessment services, both for diagnostic purposes and in the provision of trial work periods, before using either private or private-non profit Community Rehabilitation Programs.

b. The only exceptions shall be as follows:

i. the service in a publicly supported CRP is not available.

ii. provision of the service in a publicly supported CRP would create an extreme hardship for the client.

D. Scope of Establishment of Small Business Enterprise

1. The purpose of a self-employment goal for a client is to establish an individual with a disability in a small business enterprise that will provide sufficient income to support the individual and their family, thereby enabling the individual to meet ordinary daily living expenses and business costs. LRS desires to make self-employment an available option only when it is clearly demonstrated that self-employment is the best choice for the client.

2. When it is determined by a counselor and an eligible client that self-employment, through establishment of a small business enterprise, is the best option for the client, the following apply:

a. the client must present evidence of a record of success in the industry pertinent to the products and/or services the client plans to offer in this particular self-employment venture;

b. the client must attend at least one workshop on small business development designed to develop and raise the management skills of small business owners. Acceptable workshops include those operated by the small business development centers (SBDC), chambers of commerce (SCORE), Louisiana Department of Economic Development, and colleges and universities;

c. the client must develop a business plan;

d. the business plan must:

i. be thorough, realistic, and in writing;

ii. include, but is not limited to:

(a). estimates of revenues and expenses;

(b). estimates of profit;

(c). a market analysis;

(d). client as the owner/proprietor of the business

actually working in/managing the business;

(e). evidence to indicate the business venture has

the potential to generate sufficient profits to provide client with gainful income to support client/family's daily living expenses and business costs;

e. available Social Security work incentives, such as PASS and IRWE, must be investigated, applied for, and used for clients who are recipients of Social Security Benefits (SSI and SSDI);

f. the client must:

i. submit the business plan to a small business development center for evaluation of the viability of the business venture in terms of competitive profitability;

ii. share with LRS the small business development center's evaluation of and comments regarding the business plan;

iii. make modifications to the business plan if such plan, or portions thereof, are rejected by the small business development center; and

iv. resubmit such plan for re-review by the small business development center;

g. LRS has defined the scope of the establishment of a small business enterprise as reasonable start-up costs not to exceed an aggregate assistance of \$20,000. The cost of any training/workshops relative to establishing the client in a small business and/or disability-related assistive technology devices is not included in the \$20,000 limit;

h. commitment by the client to make a minimum cash capital contribution of 20 percent of the total transaction. Such funds can be from the client's personal resources, loans, etc.

i. LRS will not assist a client in the establishment of multiple (more than one) small businesses. Once the initial business is set up, LRS will not provide funds for expansion or improvements to the business. If changes in the nature of the client's disability require disability-related modifications and/or assistive technology to enable the client to continue in this employment capacity, the individual must:

i. be an eligible client or eligible for post-employment services;

ii. complete an updated business plan;

iii. meet all other applicable policy/procedure regulations;

j. LRS will not provide funding for:

i. businesses that are speculative in nature, such as investments in real estate, etc.;

ii. businesses organized as nonprofit;

iii. businesses organized as hobbies;

iv. construction and/or purchase of real estate;

v. purchase of land;

vi. refinancing of existing debt;

vii. purchase of vehicles;

k. all other applicable state, federal, and agency laws, policy and procedure must be followed, including state purchasing laws;

l. these policy provisions do not apply to the Randolph Sheppard Program;

m. ultimate approval of funding a small business enterprise for an eligible vocational rehabilitation client lies with Louisiana Rehabilitation Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 25:

§119. Transition Process for Individuals in Secondary Education Programs

A. Louisiana Rehabilitation Services (LRS) will provide vocational rehabilitation transition services to eligible individuals in their exit year from the state secondary education system. Although the education system will be involved in education-related transition services prior to the exit year, LRS' first consultation with school personnel, students with disabilities, and family members of students with disabilities will be in the year prior to the exit year. This consultation in the year prior to the exit year will enable school personnel and LRS to identify those students who might be eligible for and interested in vocational rehabilitation services.

B. LRS' transition process is a coordinated set of vocational rehabilitation services planned for an eligible student with an official secondary education transition plan. Such vocational rehabilitation transition services are designed within an outcome-oriented process that promotes movement from school to post school activities, including post secondary education, vocational training and/or integrated employment (including supported employment).

C. LRS' vocational rehabilitation transition services shall be based upon the eligible student's individual needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, and the achievement of an employment outcome.

D. The coordination and collaboration between LRS and the state education system will assure continuity of services for eligible students.

E. The following provisions are the key points in LRS' transition process:

1. LRS will provide consultation (to the extent possible considering time and resources) the year prior to the individual's exit year with regard to students who have official transition plans within the state education system.

2. LRS will provide vocational rehabilitation transition services during the eligible individual's exit year to students who have official transition plans within the state education system. The provision of these vocational rehabilitation transition services will be assured through the completion of an eligible individual's IPE BEFORE the individual leaves the school system.

F. The LRS director or designee shall have the sole responsibility for any exceptions to this policy on transition services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), repromulgated LR 25:

§121. Conditions for Case Closure

A. Options for Closure. An individual's case can be closed at any time in the vocational rehabilitation process when it has been determined that:

1. the individual is not available for services;
2. the individual is ineligible;

3. appropriate planned services, expenditures and reports have been completed, and additional services are either unnecessary or inappropriate, except as may be provided under post-employment services.

B. Closure as Successfully Rehabilitated. An individual is determined to have achieved an employment outcome if the following requirements are met:

1. the provision of services under the individual's IPE has contributed to the achievement of the employment outcome;

2. the employment outcome is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;

3. the employment outcome is in the most integrated setting possible, consistent with the individual's informed choice;

4. the individual has maintained the employment outcome for a period of at least 90 days;

5. the individual and the rehabilitation counselor consider the employment outcome to be satisfactory and agree that the individual is performing well on the job.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:664.4 and R.S. 36:477.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Rehabilitation Services, LR 17:891 (September 1991), amended LR 20:317 (March 1994), LR 23:994 (August 1997), repromulgated LR 25:

Interested persons may submit written comments for 40 days from the date of this publication to May Nelson, Director, Louisiana Rehabilitation Services, 8225 Florida Boulevard, Baton Rouge, LA 70806-4834. Ms. Nelson is responsible for responding to inquiries regarding the proposed rule.

Public Hearings will be conducted at 10 a.m. on Tuesday, May 25, 1999, as follows: Baton Rouge, LRS Regional Office, 3651 Cedarcrest Avenue; New Orleans, UNO Campus, TRAC Bldg., Room 103; Shreveport, LRS Regional Office, 1525 Fairfield Avenue; Alexandria, LRS Regional Office, 900 Murray Street.

Individuals with disabilities who require special services should contact Judy Trahan, Program Manager, Louisiana Rehabilitation Services, at least 14 working days prior to the hearing if special services are needed for their attendance. For information or assistance, call 225-925-4131 or 1-800-737-2958, or for voice and TDD, 1-800-543-2099.

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Vocational Rehabilitation Policy Manual**

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

The \$1,028,434 savings is based on a five-year trend that 29% of the consumers receiving college, barber/beauty school, business school, trade/technical/nursing school, or other training meet LRS' economic needs test; and 36% of the total amount spent on consumers are for these services. The

\$1,028,434 is only 1/4 of the savings because this change will only affect new consumers.

However, this average will be offset by a projected increase in the purchase of assistive technology devices. Based on a 59% increase in costs from 1997 to 1998, the \$1,028,434 savings will be applied to the purchase of additional assistive technology devices.

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

There is no proposed increase or decrease in anticipated revenues.

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

Vocational Rehabilitation consumers will be affected by a decrease in the number of new applicants placed into Category II (significantly disabled) of the Order of Selection and a corresponding increase in the number of new applicants placed into Category III (non-significantly disabled) of the Order of Selection.

LRS will refer these individuals (Category III) for training services through the Workforce Development System and the states' TOPS program, as well as any other comparable services and similar benefits.

The cost to directly affected persons or non-governmental groups will be the savings LRS projects, \$1,028,434. The economic benefits will be the additional \$1,028,434 LRS will provide for assistive technology devices to eligible clients.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no projected impact on competition and employment in public or private sectors.

May Nelson
Director
9904#051

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of the Treasury
Board of Trustees of the
State Employees' Retirement System**

**Deferred Retirement Option Plan (DROP)—Disbursement
(LAC 58.I.2713)**

Under the authority of LSA-R.S. 11:515 and in accordance with LSA-R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") advertises its intent to amend LAC 58.I.2713. The proposed amendment to the rules changes the minimum distributions requirements from the Deferred Retirement Option Plan to comply with the Internal Revenue Code.

**Title 58
RETIREMENT**

Part I. State Employees' Retirement

Chapter 27. DROP Program

Subchapter C. Withdrawal

§2713. Time for Disbursement

A. The DROP account must be totally disbursed within the expected lifetime of the participant in accordance with federal laws. The expected lifetime is determined based on the age of the participant on the date of termination. All funds from the DROP account must be withdrawn in accordance with the following schedule:

Age at Termination	Age of Final Distribution
55 and under	75
56-60	77
61-66	80
67-70	81
71 and older	add 10 years to age

B. Disbursements from the DROP accounts shall be made on the sixth day of each month; if the sixth is a weekend or holiday, the disbursement shall be made on the following workday.

C. When a retiree reaches age 70½, mandatory monthly distributions shall begin in accordance with IRS regulations. The amount of the monthly distributions will be recalculated annually.

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:

Interested persons may submit written opinions, suggestions or data to Kevin P. Torres, General Counsel, Louisiana State Employees' Retirement System, 8401 United Plaza Boulevard, Room 145, Baton Rouge, Louisiana 70809 through May 30, 1999.

James O. Wood
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Deferred Retirement Option Plan (DROP)—
Time for Disbursement**

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

No implementation cost to the state or local governmental units are anticipated because of the proposed rules.

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

These regulations will have no impact 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 economic impact on those persons who are required to withdraw their DROP funds in accordance with the Internal Revenue Code, and it will save them a 50% excise tax penalty for not making the withdrawal.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact on competition and employment.

James O. Wood
Executive Director
9904#004

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of the Treasury
Board of Trustees of the
State Employees' Retirement System**

Trustee Election (LAC 58:I.301, 303, 501, and 503)

Under the authority of LSA R.S. 11:515 and in accordance with LSA R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") advertises its intent to amend LAC 58:I.301, 303, 501 and 503. The proposed amendment to the rules changes the time period for the election of Trustees of the Board of Trustee of LASERS.

Title 58

RETIREMENT

Part I. State Employees' Retirement

Chapter 3. Election of Active Member Trustees

§301. General Schedule of Elections

B. The schedule for elections shall be as follows:

4. fourth Friday in September: the final day that information on candidates and ballots may be mailed.

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 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:

§303. Election Rules

D. Ballots or election brochures shall be distributed or mailed by the fourth Friday in September. Every active contributing member appearing on the June Monthly Retirement Reports shall receive a ballot or election brochure for voting. Participants in the DROP program shall vote in the

active member's election and shall have ballots or election brochures mailed to their homes.

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 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:

Chapter 5. Election of Retired Member Trustees

§501. General Schedule of Elections

B. The schedule for elections shall be as follows:

4. Fourth Friday in September: the final day that information on candidates and ballots may be mailed.

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 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:

§503. Election Rules

D. Ballots or election brochures shall be distributed to each retired member by the fourth Friday in September. Every retiree member appearing on the June Retiree Master List shall receive a ballot or election brochure for voting.

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 22:373 (May 1996), amended LR 23:997 (August 1997), LR 25:

Interested persons may submit written opinions, suggestions or data to Kevin P. Torres, General Counsel, Louisiana State Employees' Retirement System, 8401 United Plaza Boulevard, Room 145, Baton Rouge, Louisiana 70809 through May 30, 1999.

James O. Wood
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Trustee Election**

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

No implementation cost to the state or local governmental units are anticipated because of the proposed rules. The proposed rule merely changes the dates involved in the process for electing members of the Board of Trustees for the Louisiana State Employees' Retirement System.

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

These rules will have no impact on revenue collections of state or local governmental units.

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

No costs or economic benefits to directly affected persons are anticipated to result from the proposed amendment to these rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will not effect competition and employment.

James O. Wood
Executive Director
9904#005

H. Gordon Monk
Staff Director
Legislative Fiscal Office

Committee Reports

COMMITTEE REPORT

House of Representatives Committee on Health and Welfare April 9, 1999

Pharmacy Program—Average Wholesale Price

(Editor's Note: The emergency rule can be viewed in the emergency rule section of this volume of the *Louisiana Register*.)

On April 7, 1999, pursuant to the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., the House Committee on Health and Welfare met to consider an emergency rule adopted by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing effective for date of service on or after April 1, 1999. The rule limits payment for prescription drugs under the Pharmacy Program of the Medicaid Program.

By a vote of 12-2, the members of the committee found the emergency rule unacceptable.

Rodney Alexander
Chairman

9904#063

Administrative Code Update

CUMULATIVE: JANUARY - MARCH, 1999

LAC Title	Part.Section	Effect	Location LR 24	Month	Page				
						40	I.2011-2173	Repealed	Feb 264
							I.5501-6661	Adopted	Feb 264
4	VII.1317	Amended	Jan	26		42	III.104	Amended	Jan 79
	VII.1317	Amended	Mar	499			IX.2105, 2701, 2703, 2707	Amended	Jan 79
							IX.2723, 2729, 2901-2917	Amended	Jan 79
7	V.911	Amended	Feb	236			IX.2921, 3301-3309, 3319	Amended	Jan 79
	XXV.121, 141	Amended	Feb	235			XI.2407, 2413	Amended	Jan 85
13	I.Chapter 50	Amended	Feb	242		43	I.Chapter 37 and 39	Adopted	Feb 308
	I.Chapter 60	Amended	Feb	237			XXIX.Chapter 1	Adopted	Mar 500
	I.Chapter 70	Adopted	Feb	240		46	V.2905,3101,3303	Amended	Feb 245
	V.Chapter 1	Adopted	Mar	414			V.2909	Repealed	Feb 245
16	II.501	Adopted	Jan	100			V.4701,4703,4705,4707	Adopted	Feb 245
							V.4709,4711,4713,4715	Adopted	Feb 245
19	VII.Chapter 73	Adopted	Mar	412			XXXIII.114	Amended	Mar 514
							XXXIII.124	Adopted	Mar 511
22	I.203	Adopted	Mar	522			XXXIII.301	Amended	Mar 509
	XIII.503	Amended	Jan	26			XXXIII.306	Amended	Mar 513
							XXXIII.314	Amended	Mar 513
25	Chapter 5	Adopted	Feb	236			XXXIII.316	Amended	Mar 512
							XXXIII.320	Adopted	Mar 512
28	I.105	Amended	Feb	255			XXXIII.421	Amended	Mar 509
	I.105	Amended	Mar	418			XXXIII.504	Amended	Mar 510
	I.901	Amended	Mar	419			XXXIII.706	Amended	Mar 513
	I.901	Amended	Feb	249			XXXIII.901	Amended	Mar 510
	I.903	Amended	Mar	422			XXXIII.1611 and1613	Amended	Mar 510
	I.903	Amended	Mar	424			XLV.1501-1519	Amended	Jan 27
	I.903	Amended	Mar	424			XLV.4501-4515	Amended	Jan 27
	I.903	Amended	Mar	424			XLVII.Chapter 33	Amended	Mar 514
	I.904	Amended	Feb	249			LX.1301	Amended	Feb 259
	I.906	Amended	Feb	254			LX.1303-1325	Adopted	Feb 259
	I.917	Amended	Feb	251			LXXXV.704	Amended	Mar 519
	I.1523	Amended	Mar	424			LXXXV.710	Amended	Mar 519
	I.1709	Amended	Feb	247					
	I.1712	Adopted	Feb	247		52	I.1301, 1311, 1604	Amended	Jan 24
	I.1713	Amended	Feb	255			I.1801-1805	Adopted	Jan 24
	IV.301,701-705,1703	Amended	Feb	256		55	V.Chapter 25	Adopted	Jan 85
33	I.1413,1415	Amended	Mar	426			VII.319	Amended	Feb 311
	I.Chapter 23	Adopted	Mar	428		61	I.201	Adopted	Mar 526
	III.217,219	Amended	Mar	426			V.303,703,907,1103,1305	Amended	Feb 312
	III.509	Amended	Feb	259			V.1307,1503,2301,2303,2503	Amended	Feb 312
	III.2117	Amended	Feb	258			V.2703-2707,3101-3105	Amended	Feb 312
	III.5901	Amended	Mar	425			V.3501 and 3503	Amended	Feb 312
	V.Chapters 1,3,5,11,15,17,22	Amended	Mar	430		67	III.2514	Amended	Feb 320
	V.528	Adopted	Mar	430			III.2913	Amended	Mar 526
	V.2236	Adopted	Mar	430			VII.Chapter 5	Adopted	Mar 527
	V. Chapters 31,33,35,37,40	Amended	Mar	430		70	III.Chapter 23	Adopted	Jan 96
	V.3309	Repromulg	Jan	25			XXI.101-121	Adopted	Mar 536
	V.Chapters 41,43, and 49	Amended	Mar	430			IX.Chapter 13	Adopted	Jan 95
	V.5129,5131	Amended	Mar	426		76	I.301,303	Amended	Feb 321
	VII.529	Amended	Mar	426			VII.169	Amended	Jan 102
	IX.1309	Amended	Mar	426			VII.187	Adopted	Jan 101
	XI.307	Amended	Mar	426			VII.355	Adopted	Mar 542
	XV.2510,2511	Amended	Mar	426			VII.357	Adopted	Mar 543
35	XIII.11115	Amended	Jan	25					
37	XIII.Chapter 51	Adopted	Jan	78					

Potpourri

POTPOURRI

**Department of Environmental Quality
Office of Legal Affairs and Enforcement
Investigations and Regulation Development Division**

Semiannual Regulatory Agenda

The Department of Environmental Quality announces the availability of the April 15, 1999, edition of the *Semiannual Regulatory Agenda* prepared by the Investigations and Regulation Development Division. The current agenda contains information on rules which have been proposed but have not been published as final and rules which are scheduled to be proposed in 1999. The agenda is available on the Department's web site at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>. Copies of the agenda may be purchased by contacting Lula Alexander, Department of Environmental Quality, Office of Legal Affairs and Enforcement, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884-2282 or by calling (225) 765-0399. Check or money order is required in advance for each copy.

Tim B. Knight
Administrator

9904#061

POTPOURRI

**Department of Environmental Quality
Office of the Secretary**

**Violation Classification and Enforcement
Response—Advance Notice of Proposed Rulemaking
(OS031)**

The Louisiana Department of Environmental Quality is requesting comments on the Violation Classification and Enforcement Response draft proposed rule. This proposal was drafted in response to R.S. 30:2050.1(A), which directs the secretary to establish policies and procedures to address violations in a formal and consistent manner. This is a preliminary step in the rulemaking process; official rulemaking will be initiated following review and consideration of the comments received on this advance notice.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

**Subpart 1. Departmental Administrative Procedures
Chapter 6. Violation Classification and Enforcement
Response**

§601. Purpose

The purpose of these regulations is to classify violations that are discovered by the department and determine the appropriate enforcement response by the department to each violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(E)(3)(b).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§603. Scope and Applicability

These regulations apply to every violation discovered by the department. Violations may be discovered by the department in a variety of ways, including but not limited to, department inspection or file review, citizen complaint, self auditing and reporting, or referrals from other state and federal agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(E)(3)(b).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§605. Definitions

Continuous Violation—an act or omission that violates a permit condition, rule, or statute and that continues without interruption for more than one day after discovery by the department.

Compliance Order (CO)—an order issued by the secretary or an assistant secretary requiring a respondent to comply with specified provisions of a rule or a permit within a specified period of time.

Department—the Louisiana Department of Environmental Quality.

Facility Interview Form (FIF) and Compliance Evaluation Form (CEF)—reports provided by the department to a facility representative when a violation is discovered.

Notice of Corrected Violation (NOCV)—a letter detailing any violation(s) discovered by the department that have been corrected to the satisfaction of the department.

Penalty Assessment (PA)—an enforcement action that assesses a penalty for violation(s).

Repeated Violation—an act or omission that violates the same permit condition, rule, or statute as a previous act or omission committed by the same person.

Violation—failure to comply with the requirements and conditions of rules and permits under Title 33.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(E)(3)(b).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§607. Violation Classification

A. Every violation discovered by the department shall be classified as a level I, II, or III violation.

B. Level I violations are exclusively those that relate to:

1. engaging in an activity where no permit or other required authorization to engage in that activity exists at any location within the site or facility. This subcategory does not include households or residences;

2. any discharge exceeding permit or regulatory limits that causes significant risk of harm to human health or the environment;

3. a violation that is grossly negligent, egregious, or constitutes a blatant disregard for the regulatory program; or

4. a repeated or continuous level II violation.

C. Level II Violations

1. Level II violations are violations not otherwise classified as level I or III.

2. The department may classify a continuous or repeated level II violation as a level I violation.

D. Level III Violations

1. Level III violations are errors in records or recordkeeping required to be kept or maintained in accordance with the Environmental Quality Act or the regulations promulgated thereunder.

2. The department may classify a continuous or repeated level III violation as a level II violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(E)(3)(b).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§609. Enforcement Response

A. Violations shall be addressed by at least one of the enforcement responses described in Subsections C and D of this Section.

B. Violations, regardless of classification, shall be noted by the department in a FIF or CEF. However, the failure of the department to note a violation in a FIF or CEF shall not preclude the department from taking any other enforcement action regarding that violation.

C. Level I Violations

1. The department shall issue a NOCV for every level I violation that is corrected during the inspection or within 30 days after the inspection. If the level I violation is not corrected to the satisfaction of the department within 30 days after the date of the inspection, a CO shall be issued.

2. A PA shall be issued for every level I violation. The amount of the penalty shall be determined by the department after consideration of the nine factors in R.S. 30:2025(E)(3) and in accordance with LAC 33:I.Chapter 7 [this chapter is scheduled to be final April 1999].

3. A notice of penalty assessment shall be sent prior to the penalty as required by R.S. 30:2050.3.

D. Level II Violations

1. The department shall issue a NOCV for every level II violation that is corrected during the inspection or within 30 days after the inspection. If a level II violation is not corrected to the satisfaction of the department within 30 days after the date of the inspection, a CO shall be issued.

2. A PA may be issued for a level II violation. The department shall consider the nine factors in R.S. 30:2025(E)(3) in deciding whether a penalty should be issued. The amount of the penalty shall be determined by the department after consideration of the nine factors in R.S. 30:2025(E)(3) and in accordance with LAC 33:I.Chapter 7 [this chapter is scheduled to be final April 1999].

3. A notice of penalty assessment shall be sent prior to the penalty as required by R.S. 30:2050.3.

E. Level III Violations

1. Level III violations, if corrected in the field at the time of the inspection, will be noted in the FIF as corrected. No further enforcement response is necessary for the violation.

2. If the level III violation is corrected at some point after the inspection, a NOCV may be issued if compliance is documented to the satisfaction of the department and the respondent requests that a NOCV be issued.

3. The department will determine whether the violation has been corrected during a subsequent inspection. If the violation has not been corrected by the time of the subsequent inspection, it will be deemed continuous and treated as a level II violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(E)(3)(b).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

§611. Enforcement Discretion

The secretary, or the appropriate assistant secretary, may decide, on a case-by-case basis, to re-classify a level I violation as a level II violation if the facility has come into compliance and if the decision is not contrary to the purposes and policies of the Environmental Quality Act (the Act), as set forth in R.S. 30:2002 and 30:2003. Nothing herein shall preclude the department from taking any action, administrative or judicial, allowed by the Act or the regulations promulgated thereunder. Nothing herein shall preclude the department from issuing a CO or PA immediately upon discovery of a violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(E)(3)(b).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:

Comments are due by May 20, 1999, to Patsy Deaville, Investigations and Regulation Development Division (IRDD), Box 82282, Baton Rouge, LA 70884 or to fax number (225) 765-0486. Commentors should reference this document as Log Number OS031.

Copies of the draft proposed rule can be purchased by visiting the IRDD office from 8 a.m. until 4:30 p.m. located at 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810. Copies may also be obtained by writing to the

IRDD at the above post office box address. You may contact the IRDD at (225) 765-0399 for pricing information. A check or money order is required in advance for each copy of OS031. The document will also be available on the Internet on LDEQ's home page at: <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

J. Dale Givens
Secretary

9904#062

POTPOURRI

Office of the Governor Division of Administration Office of Community Development

Public Hearing—Consolidated Annual Performance and Evaluation Report for FY 1998 and Consolidated Plan for FY 2000-FY 2004

As set forth in 24 CFR Part 91, the U.S. Department of Housing and Urban Development (HUD) requires state agencies which administer certain HUD programs to incorporate their planning and application requirements into one master plan called the Consolidated Plan. In Louisiana the four state agencies participating in this consolidated planning process and the HUD-funded program administered by each agency include the Division of Administration/Office of Community Development (Small Cities Community Development Block Grant Program), the Louisiana Housing Finance Agency (HOME Investment Partnerships Program), the Department of Social Services/Office of Community Services (Emergency Shelter Grants Program), and the Department of Health and Hospitals/HIV/AIDS Program (Housing Opportunities for Persons with AIDS Program). A summary of the four programs follows.

The **Small Cities Community Development Block Grant Program** provides financial assistance to parishes of less than 200,000 persons and municipalities with a population of less than 50,000 in their efforts to provide a suitable living environment, decent housing, essential community facilities, and expanded economic opportunities. Eligible activities include community infrastructure systems such as water, sewer, and street improvements, housing rehabilitation, and economic development assistance in the form of grants and loans. Projects funded under this program must principally benefit persons of low and moderate income.

The objectives of the **HOME Investment Partnerships Program** are:

1. to expand the supply of decent and affordable housing for low and very low income persons;
2. to stabilize the existing deteriorating owner occupied and rental housing stock through rehabilitation;
3. to provide financial and technical assistance to recipients/subrecipients; and
4. to extend and strengthen partnerships among all levels of government and the private sector, including

for-profit and nonprofit organizations, in the production and operation of affordable housing.

The purpose of the **Emergency Shelter Grants Program** is to help local governments and community organizations:

1. to improve and expand shelter facilities serving homeless individuals and families;
2. to meet the costs of operating homeless shelters;
3. to provide essential services; and
4. to perform homeless prevention activities.

The **Housing Opportunities for Persons with AIDS Program** provides localities with the resources and incentives to devise and implement long-term comprehensive strategies for meeting the housing needs of persons with acquired immuno-deficiency syndrome (AIDS) or related diseases and their families.

The four agencies implementing these programs are preparing their consolidated annual performance and evaluation report for the FY 1998 program year which ended March 31, 1999. The purpose of that document is to report on the progress the State has made in addressing the goals and objectives identified in its Consolidated Plan for FY 1995- FY 1999 and FY 1998 Consolidated Annual Action Plan.

The four agencies administering these programs are also beginning to prepare the Consolidated Plan for FY 2000-FY 2004. The Consolidated Plan will outline the State's overall housing and community development needs and will include a strategy for meeting those needs for federal fiscal years 2000-2004. The Consolidated Plan will also include a one year action plan for the proposed distribution of funds received under the FY 2000 federal funding allocation for the aforementioned four HUD programs.

The State will hold public hearings for a two-fold purpose regarding these programs.

The first purpose of the hearings will be to receive comments on the State's performance during the FY 1998 program year. Copies of the consolidated annual performance and evaluation report will be available for review and each agency will present a summary of its accomplishments as identified in the performance report. For those persons who are unable to attend the public hearings, copies of the performance report will be available for review beginning July 27, 1998, at the Office of Community Development, State Capitol Annex, 1051 North Third Street, Room 168 in Baton Rouge, at the Louisiana Housing Finance Agency at 200 Lafayette Street, Suite 300 in Baton Rouge, at the Department of Social Services/Office of Community Services at 333 Laurel Street, Room 606 in Baton Rouge, and at the Department of Health and Hospitals/HIV/AIDS Program Office at 234 Loyola Avenue, Fifth Floor in New Orleans. Written comments on the performance report may be submitted beginning May 24, 1999, and will be accepted until June 10, 1999; comments should be submitted to the Office of Community Development, Post Office Box 94095, Baton Rouge, LA 70804-9095.

The second purpose of the hearings will be to obtain views on the housing and community development needs throughout the State; those comments will assist the agencies in developing the Consolidated Plan for FY 2000-FY 2004 and

the FY 2000 Consolidated Annual Action Plan. For those persons who are unable to attend the public hearings, written comments on the needs of the State may be submitted beginning May 24, 1999, and will be accepted until June 10, 1999; comments may be submitted to the Office of Community Development, Post Office Box 94095, Baton Rouge, LA 70804-9095.

The public hearings will be held on May 24, 1999, at 1:30 p.m. in the Council Chambers at the Pineville City Hall, 910 Main Street, Pineville, Louisiana and on May 25, 1999, at 10:00 a.m. in the Committee Room on the third floor of the Capitol Annex, 1051 North Third Street, Baton Rouge, Louisiana. These facilities are accessible to persons with physical disabilities. Non-English speaking persons and persons with disabilities requiring special accommodations should contact the Office of Community Development at (225) 342-7412 or TDD (225) 342-7422 or at the mailing address in the preceding paragraph at least five working days prior to each hearing.

Mark C. Drennen
Commissioner of Administration

9904#067

POTPOURRI

Office of the Governor Oil Spill Coordinator's Office

Oil Spill Contingency Fund Balance

In accordance with the provisions of the Louisiana Oil Spill Prevention and Response Act, particularly R.S. 30:2487, notice is hereby given that the balance of the Oil Spill Contingency Fund has reached \$10,907,139.88 as of February 28, 1999, as certified to me by the Honorable Ken Duncan, State Treasurer.

Roland J. Guidry
Oil Spill Coordinator

9904#023

POTPOURRI

Office of the Governor Oil Spill Coordinator's Office

Restoration Planning—Lake Grande Ecaille Oil Spill

The Louisiana Oil Spill Coordinator's Office (LOSCO) as the trustee coordinator for the State of Louisiana, in consultation and agreement with the state natural resource trustees, namely the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Natural Resources (LDNR), the Louisiana Department of Wildlife and Fisheries (LDWF); and the federal natural resource trustees, namely the U.S. National Oceanic and Atmospheric Administration (NOAA), and the U.S. Department of the Interior (DOI), represented by the U.S. Fish and Wildlife Service (USFWS), have determined that the impacts of the

September 22, 1998 discharge of crude oil associated with the Cockrell Moran #176 well blow-out, operated by Equinox, Inc. warrants conducting a natural resource damage assessment that will include restoration planning.

On September 22, 1998, an Equinox, Inc. well blew-out, discharging an unknown quantity of crude oil and oily sand into Lake Grande Ecaille, Plaquemines Parish, Louisiana. The nature of the discharge (uncontrolled well blow-out) makes accurate determinations of release volumes difficult, but estimates provided by Equinox, LDEQ, and the USCG range from less than 500 barrels to 1500 barrels. Several thousand acres of Lake Grand Ecaille, Barataria Bay and Gulf of Mexico surface waters, marsh and other habitats and, potentially, the fauna inhabiting this area may have been exposed to crude oil as a result of this discharge. Equinox, Inc. has accepted responsibility for this incident, and will be hereafter referred to as the Responsible Party (RP).

Lake Grande Ecaille and the adjacent areas are a shallow estuarine bay system characterized by soft organic sediment. Tidal amplitude is small, driven primarily by wind. It is bordered by extensive acreage of salt marsh, which is critical nursery habitat for numerous species and provides many other ecological services. The Lake Grande Ecaille area also includes bayous, channels and small islands. Aquatic species present include, but are not limited to estuarine and estuarine-dependent white and brown shrimp, blue crabs, oysters and finfish. Wildlife species that may be present in Lake Grande Ecaille include, but are not limited to resident and migratory birds, furbearers, marine mammals and sea turtles. Some of the species that may be present have threatened or endangered status. The area is used for fishing, hunting, boating, shrimping, oyster harvesting and other commercial and recreational activities.

The trustees are designated pursuant to 33 U.S.C. §2706(e), Executive Order 12777, and the National Contingency Plan, 40 C.F.R. Part 300.600 and 300.605. Pursuant to R.S. 30:2460, the State of Louisiana Oil Spill Contingency Plan, September 1995, describes the state trust resources, including the following: vegetated wetlands, surface waters, ground waters, air, soil, wildlife, aquatic life, and the appropriate habitats on which they depend. The U. S. Department of the Interior, through the involvement of the U.S. Fish and Wildlife Service is trustee for natural resources described within the National Contingency Plan, 40 C.F.R. §300.600(b)(2) and (3), include the following and their supporting ecosystems: migratory birds, anadromous fish, endangered species and marine mammals, federally owned minerals, certain federally managed water resources, and natural resources located on, over, or under land administered by the Department of the Interior. In the case at hand, the trust resources that may be of concern are migratory birds and threatened and endangered species, which are managed by the U.S. Fish and Wildlife Service, which represents DOI in this matter. NOAA's trust resources include, but are not limited to, commercial and recreational fish species, anadromous and catadromous fish species, marshes and other coastal habitats, marine mammals, and endangered and threatened marine species.

Following the notice of the discharge, the natural resource

trustees have made the following determinations required by 15 C.F.R. §990(a):

- The natural resource trustees have jurisdiction to pursue restoration pursuant to the Oil Pollution Act.
- The discharge of crude oil into the waters of Lake Grande Ecaille on September 22, 1998 was an incident as defined in 15 C.F.R. §990.30.
- This unauthorized discharge is not permitted under state, federal or local law.
- Natural resources under the trusteeship of the natural resource trustees listed above may have been injured as a result of the incident. The oil discharged contains components that may be toxic to aquatic organisms, birds, wildlife and vegetation when high exposure levels occur. Vegetation, birds, and/or aquatic organisms may have been exposed to the oil from this discharge, and mortalities to some flora and fauna and lost ecological services may have resulted from this incident.

Since the conditions of 15 C.F.R. §990.41(a) were met, as described above, the trustees made the further determination pursuant to 15 C.F.R. §990.41(b) to proceed with preassessment. Equinox, at the invitation of the trustees, agreed to participate in the preassessment, pursuant to 15 C.F.R. §990.41 (C).

For the reasons discussed below, the natural resource trustees have made the determinations required by 15 C.F.R. §990.42(a) and are providing notice pursuant to 15 C.F.R. §990.44 that they intend to conduct restoration planning in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of this incident.

Injuries have resulted from this incident, the extent of which have not been fully determined at this time. The trustees base this determination upon data which was collected and analyzed pursuant to 15 C.F.R. 990.43 and which demonstrates that resources and services have been injured from this incident. Natural resources injured as a result of the discharge and the response may include, but are not limited to: benthic communities, water quality, wetlands dominated by smooth cordgrass *Spartina alterniflora* and interspersed with black mangrove *Avicennia germinans*, fish and wildlife species and recreational use opportunity. The USFWS estimates that 2,000 to 3,000 birds may have been in the Lake Grande Ecaille area at the time of the incident. Extreme weather conditions precluded the survey of dead and/or oiled birds. It is estimated that several thousand acres of wetlands and open water habitat have been exposed to at least oil sheen, and the above-ground portion of some vegetation exhibited signs of stress to varying degrees. A portion of the Lake Grande Ecaille area was effectively closed to recreational use for two (2) days immediately after the incident.

Due to the nature of the event and weather conditions, response actions were not able to prevent the injuries resulting from the incident. Although response actions were pursued, the nature of the discharge and the sensitivity of the environment precluded prevention of some injuries to natural resources. It is anticipated that injured natural resources will eventually

return to baseline, but there is a potential for interim losses to have occurred, and to continue to occur until a return to baseline is achieved.

Feasible primary and compensatory restoration actions exist to address injuries from this incident. Restoration actions that could be considered include, but are not limited to: replanting *Spartina alterniflora*, *Avicennia germinans*, and/or other native wetland vegetation in appropriate areas; creation, enhancement or protection of marsh; creation of oyster reef habitat; and creation of bird colony areas.

Assessment procedures are available to be used to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services. Among these procedures are marsh grass and mangrove injury assessment studies to be used in conjunction with Habitat Equivalency Analysis to determine compensation for injuries to marsh vegetation and marsh services. Models, comparisons to observations of injury resulting from similar releases or other methodologies are available for evaluating injuries to fauna.

Pursuant to 15 C.F.R. §990.44(c), the Trustees seek public involvement in restoration planning for this petroleum discharge, through public review of and comment on the documents contained in the administrative record, which is maintained in the Louisiana Oil Spill Coordinator's Office, as well as on the Draft and Final Restoration Plans when they have been prepared.

For more information, please contact the Louisiana Oil Spill Coordinator's Office, Office of the Governor, 625 North Fourth Street, Suite 800, Baton Rouge, LA 70802; phone (225) 219-5800 (Attn: Warren Lorentz).

The Louisiana Oil Spill Coordinator, as the Lead Administrative Trustee, and on behalf of the Natural Resource Trustees of the State of Louisiana, the DOI/USFWS and NOAA, pursuant to the determinations made above and in accordance with 15 C.F.R. §990.44(d), hereby provides Equinox, Incorporated this notice of intent to conduct restoration planning and invites their participation with the Natural Resource Trustees in restoration planning.

Roland J. Guidry
Oil Spill Coordinator

9904#022

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, La. R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	Well Name	Well Number	Serial Number
Kelly H. Baxter	Big Island	WX A RA SU11;Floyd	001	153794

Divi Oil & Gas, Inc.	Big Creek	Bunch	001	194382
Divi Oil & Gas, Inc.	Big Creek	Bunch	002	194383
Divi Oil & Gas., Inc.	Big Creek	Ray Crawford	001	192638
Divi Oil & Gas, Inc.	Big Creek	Ray Crawford	002	198903
James A. Hunter	North Carterville	Hunter Fee	001	166251
The Leigh Operating Co.	Fordoche	Holloway Planting Co Inc B	004	135940
The Leigh Operating Co.	Fordoche	Holloway Planting Co Inc	001	208796
The Leigh Operating Co.	Fordoche	Holloway Planting Co Inc B	006	138342
The Leigh Operating Co.	North Bayou Cholpe	V M Wilson	001	204492
The Leigh Operating Co.	Simon Pass	Ramos	001	139122
The Leigh Operating Co.	Simon Pass	Ramos	1D	139391
The Leigh Operating Co.	Simon Pass	Hebert	3-D-ALT	139149
The Leigh Operating Co.	Simon Pass	Norman A	001	141857
The Leigh Operating Co.	Simon Pass	Norman A	1D	142359
The Leigh Operating Co.	Simon Pass	Ramos Invest Co et al SWD	002	144136
Mid South Trading, Inc.	Shongaloo	Patterson	001	209139
Mid South Trading, Inc.	Shongaloo	Patterson	002	220992
Oil Operators Trust	Tullos-Urania	Urania Lbr Co	007	010326
Unknown	Tullos-Urania	Urania Lbr Co	020	990410
Unknown	Tullos-Urania	Hardtner	020	990411
Unknown	Tullos-Urania	Hardtner	021	990409

Phillip N. Asprodites
Commissioner

9904#026

POTPOURRI

**Department of Revenue
Severance Tax Division**

Severance Tax Rate on Natural Gas

Pursuant to the authority granted by R.S. 47:633(9)(d)(ii), the Department of Natural Resources has determined the "gas base rate adjustment" for the twelve-month period ending March 31, 1999, to be 1.1153. Accordingly, the Department of Revenue has determined the severance tax rate on natural gas and related products described in R.S. 47:633(9)(a) to be 7.8 cents per thousand cubic feet measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of sixty degrees Fahrenheit, effective July 1, 1999.

The reduced rates provided for in R.S. 47:633(9)(b) and (c) remain the same.

The determination of this "gas base rate adjustment" and corresponding tax rate and their publication in the *Louisiana Register* shall not be considered rule making within the intention of the Administrative Procedure Act, R.S. 49:950 et seq.

Questions should be directed to Carl Reilly, Director of the Severance Tax Division at (225) 925-7497.

John Neely Kennedy
Secretary

9904#007

POTPOURRI

**Department of Revenue
Tax Commission**

Ad Valorem Tax—Ratio Studies

Pursuant to R.S. 47:1837, the following is the result of the Tax Commission's measurement of the level of appraisal and/or assessment and the degree of uniformity for Whole Property Ratio Study for the year 1998 (1999 Orleans Parish). This data shall constitute prima facie evidence of the uniformity or lack of uniformity with constitutional and/or statutory requirements of each parish in the State.

PARISH	MEAN (%)	MEDIAN (%)	COEFFICIENT OF DISPERSION %
Acadia	10.4	10.0	7.0
Allen	10.9	10.0	13.0
Ascension	9.4	9.5	10.0
Assumption	9.1	10.0	13.0
Avoyelles	10.2	10.0	14.0
Beauregard	9.9	10.0	3.0

Bienville	9.6	9.7	6.0
Bossier	9.4	9.3	11.0
Caddo	9.3	9.3	9.0
Calcasieu	10.0	9.8	15.0
Caldwell	10.0	10.0	5.0
Cameron	10.5	10.0	7.0
Catahoula	10.1	10.0	7.0
Claiborne	10.1	10.0	4.0
Concordia	10.3	10.0	7.0
DeSoto	10.2	10.0	12.0
East Baton Rouge	10.3	10.0	3.0
East Carroll	10.8	10.2	11.0
East Feliciana	10.1	10.0	18.0
Evangeline	10.1	10.0	4.0
Franklin	9.7	9.5	17.0
Grant	9.8	9.9	3.0
Iberia	10.0	10.0	1.0
Iberville	10.0	10.0	3.0
Jackson	10.1	10.0	5.0
Jefferson	10.1	10.0	2.0
Jefferson Davis	9.6	9.2	9.0
Lafayette	9.3	9.0	4.0
Lafourche	9.8	9.9	6.0
LaSalle	9.9	10.0	2.0
Lincoln	10.0	10.0	3.0
Livingston (Revised)	9.4	9.0	11.3
Madison	9.9	9.9	14.0
Morehouse	10.3	10.0	4.0
Natchitoches	10.0	9.9	10.0
Orleans—1st MD	10.6	10.0	9.0
2nd MD	10.1	10.0	5.0
3rd MD	10.2	10.0	2.0
4th MD	9.7	10.0	13.0
5th MD	9.9	10.0	3.0

6th MD	10.3	10.0	6.0
7th MD	10.1	10.0	9.0
Ouachita	9.2	9.2	14.0
Plaquemines	10.3	10.1	6.0
Pt. Coupee	9.6	9.5	15.0
Rapides	10.1	10.0	2.0
Red River	10.9	10.1	10.0
Richland	9.9	10.0	3.0
Sabine	9.5	9.5	17.0
St. Bernard	9.9	10.0	3.0
St. Charles	10.1	10.0	1.0
St. Helena	9.5	9.7	8.0
St. James	9.9	10.0	6.0
St. John	10.0	10.0	6.0
St. Landry	10.3	10.0	4.0
St. Martin	10.0	9.9	6.0
St. Mary	10.0	9.9	3.0
St. Tammany	8.7	9.0	10.0
Tangipahoa	9.8	9.5	11.4
Tensas	10.2	10.0	12.0
Terrebonne	9.6	9.5	6.0
Union	9.8	9.8	13.0
Vermilion	11.0	10.3	10.0
Vernon	9.0	9.1	10.0
Washington	10.3	10.0	10.2
Webster	9.8	10.0	3.0
West Baton Rouge	9.9	10.0	5.0
West Carroll	10.0	10.0	3.0
West Feliciana (Revised)	10.1	10.0	3.0
Winn	10.2	10.0	3.0

NOTE: Those parishes which fell below the guidelines of the Louisiana Tax Commission were accepted with the stipulation that the deficiencies will be corrected and will be re-checked by September 30, 1999, before the 1999 rolls are certified.

Malcolm B. Price, Jr.
Chairman

9904#069

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